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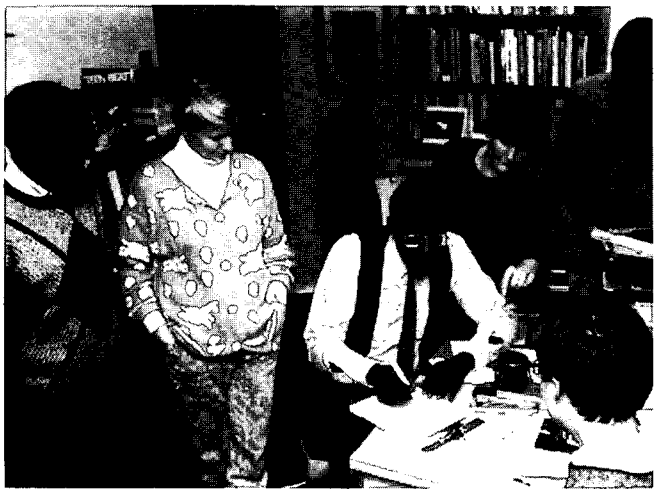

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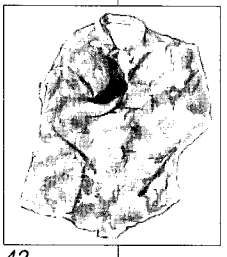

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# TV OR NOT TV?

VIRGINIA I. POSTREL

Americans are worried about violent crime. That's a major reason Republican Richard Riordan is now mayor of Los Angeles, an overwhelmingly Democratic city. Riordan promises to make the city safer by putting 3,000 more cops on the street and beefing up citizen patrols.

On Capitol Hill, they have a different approach to fighting crime. Their answer is censorship.

In late May and early June, the Senate Judiciary Committee's Constitution Subcommittee held two rounds of hearings on television violence. The legislative agenda was diffuse, but the message was emphatic. Said Sen. Howard Metzenbaum (D-Ohio): "The television industry ought to recognize one thing and not forget it. They don't own the airwaves. They have a franchise, and what Congress giveth, Congress can taketh away."

And, in a litany of double-talk, we heard:

- From Sen. Paul Simon (D-Ill.), the committee's chair, "We face ultimately a choice between censorship and voluntary, responsible conduct."
- From Sen. Herb Kohl (D-Ohio), "We do not want to impose unnecessary rules and regulations and even perhaps violate the Constitution....The question is, What are these people prepared to do by themselves? What kinds of regulations are they willing to accept, self-imposed, so that government doesn't have to step in?"
- And from Sen. Carol Moseley Braun (D-Ill.): "The senators here seated today would not—would be the first to object to the use of censorship as a solution to television violence. However, the fact remains that a television license is a privilege, and along with that privilege comes responsibility. The TV and motion picture industries cannot dodge these responsibilities by hiding behind the First Amendment."

In other words, censor yourselves, or we'll jerk your licenses. Metzenbaum put it bluntly: "If we can't stop it any other way, then maybe we'll find a way to take back some of those TV franchises in the hands of the networks and local stations. You have until December 1 to do something."

Television violence is a centrist issue. Although the lead censors are liberal Democrats, they have allies across the political spectrum. And no wonder.

The typical intellectual thinks TV is made up of, in Meg Greenfield's words, "the vivid, colorful sight of exploding heads and strung-out guts and guys endlessly careering around shooting other guys as a matter of mindless, pointless habit. Most of this stuff has long since abandoned any pretense to what the Supreme Court once called, in the context of an obscenity ruling, 'redeeming social value.' "

That is a statement by someone who does not watch television. Outside the occasional vampire movie or rerun of *Raiders of the Lost Ark*, exploding heads are truly a rarity on TV, and if Greenfield has really seen "strung-out guts," she must have been watching Lifetime broadcasts meant for physicians.

Unlike Greenfield, I watch a lot of TV, including a range of police dramas: the respectable prime-time *Law & Order*, the trashy late-night *Silk Stalkings*, and the juvenile family-hour *Time Trax*. These shows never show gore. They always emphasize the tragedy of violence, particularly violent death. They feature highly moral protagonists. They are shot full of "redeeming social value." Indeed, for a conscious meditation on the role of a moral man in an immoral world, it is hard to top Stephen Cannell's *Wiseguy* series.

The social scientists and their politician friends remove dramatic violence from its moral and imaginative context. They treat heroes the same as villains and cartoon cats and mice the same as real-life murderers. A recent survey finds the educational, politically correct *Young Indiana Jones Chronicles* the most violent—and, by implication, most dangerous—prime-time network show.

I do not pretend to be an expert on the social-science literature on television violence. But from reading often-cited studies, I have noticed a few trends.

The clinical experiments almost all depend on creating highly artificial situations, are rarely truly double-blind, and observe only small changes in behavior. The statistical studies leave out obvious variables, such as family size, the degree of parental attention, and family religious observance.

Studies are rarely duplicated; clinicians seem to redesign experiments from scratch, while statisticians rarely look at the same data twice. Survey articles include suspicious phrases such as "the association between adult criminal violence and childhood exposure to television violence *approached statistical significance*." (Emphasis added.) In other words, the relation wasn't meaningful. One cannot help suspecting researchers of bias.

The most interesting epidemiological study—which has turned up everywhere from *JAMA* to *The Public Interest*—is by Brandon S. Centerwall, a psychiatrist affiliated with the University of Washington. Centerwall testified before Simon's committee and is among the most prominent voices declaring that "children's exposure to television and television violence should become part of the public-health agenda."

Unfortunately, Centerwall's study

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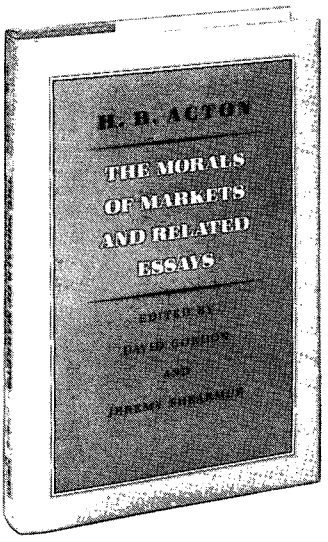


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proves nothing about television violence. It does not even examine the issue.

Rather, Centerwall compares homicide rates among whites in the United States and Canada before and after the introduction of television to the rate in South Africa, where television wasn't available until 1975. From 1945 to '74, he finds that the white homicide rate jumped 93 percent in the United States and 92 percent in Canada but fell by 7 percent in South Africa. From 1975 to '87, however, the white homicide rate in South Africa increased by 130 percent. Centerwall's conclusion: Children raised watching television start killing each other when they become adults.

There are problems with Centerwall's study. Aside from looking at the existence of capital punishment, for instance, he evinces very little interest in the very different criminal-justice systems in the three countries and how they changed over time.

But the main problem is that Centerwall's study *proves too much.* It doesn't prove that violence on television causes harm. It proves that television itself causes harm.

Assuming his conclusion is correct, violent shows may have nothing to do with the shift. Television might disrupt family life in important ways, encouraging parents to pay less attention to kids or interrupting family conversations. It might undermine legal and parental authority. It might shorten attention spans and encourage instant gratification. Banning *Wiseguy* reruns or *America's Most Wanted* wouldn't affect any of these dynamics.

And even Centerwall sees the effect as a one-time shift in the distribution of aggression within the population. This means modifying television content isn't likely to make a difference. And it means that television causes harm only by affecting the small number of people who are particularly prone to violence.

That's enough for the censors. They are quite willing to sacrifice the freedom of the many to the willful violence of the few, to ban powerful works of art because some people commit evil acts. That way you don't have to make moral judgments. You can simply blame television for crime.

# LET THEM IN

JACOB SULLUM

In June a decrepit cargo ship carrying hundreds of illegal Chinese immigrants ran into a sand bar off New York City, and six passengers died trying to swim ashore. The tragedy called out for an explanation: How did these people end up in such a desperate situation?

The news coverage of the *Golden Venture* accident put most of the blame on the smugglers, who charged their passengers some $30,000 each for a grueling five-month voyage in abysmal conditions that ended, for all but a few, in the custody of the Immigration and Naturalization Service. Clearly, the people who oversaw this trip did not deliver what they promised, and they treated their customers poorly, to say the least.

But it's a mistake to view immigrant smugglers simply as brutal criminals who exploit the hopes of poor, ignorant peasants. In many respects, they are business people offering a much-needed service, and they are not immune to market forces. For example, one immigrant tells *The New York Times* that "smugglers with the best record of transporting people safely command higher fees." The *Times* also notes that "the smugglers used to require deposits of at least 80 percent of the fare, but immigrants said that the competition...has gotten so torrid that 10 to 15 percent down is now acceptable."

Arranging to be smuggled into the United States is obviously not as cheap or safe or straightforward as booking a flight from New York to Hong Kong. But the problems faced by immigrants like those aboard the *Golden Venture* are due more to their legal status than to the base motives of their travel agents. As the experience with illegal drugs illustrates, prohibition tends to make things less reliable, more expensive, and more dangerous. In a black market, information about goods and services is hard to obtain. If customers are cheated, they have no legal recourse.

On the whole, however, illegal immigrants from China seem to be getting what they bargained for: a chance to improve their lives. There's no guarantee of success, so it's not surprising that the newspapers could find immigrants who said they regretted coming here. But as the cover story in the June 13 *Los Angeles Times Magazine* shows, many illegal immigrants are making a go of it, working off their debt after two or three years and saving money to bring relatives over and start businesses of their own.

Although this path to success exemplifies bourgeois values, it is foreign to the contemporary middle-class experience. It would have been much more familiar to colonial Americans, many of whom became indentured servants in exchange for passage here and the opportunity it promised.

The idea that something like indentured servitude could still have a place in 20th-century America offends people. *The New York Times*, which views "the smuggling of human cargo" with obvious distaste, quotes a union official who condemns the flow of illegal immigrants as "a modern-day slave trade."

Anyone who is truly concerned about the welfare of these immigrants should advocate letting them in legally. Few of us would accept the long work days, low wages, cramped living quarters, and extreme frugality of the typical newcomer from Fujian province. But it's false humanitarianism to insist that no one should be allowed to endure such conditions, even those who have risked their lives for the privilege.

**Summertime** is here, and this is a double issue. REASON goes on hiatus for the next month. The next issue you see will be dated October.

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# LETTERS

## Green Eyeshades

I was pleased to see Jonathan Marshall's very timely article about green taxes ("Paying for Pollution," Apr.). Most of the article was appropriately skeptical, but I was surprised at its seeming acceptance of several points.

I was baffled by Charles Ballard and Steven Medema's study about the effects of different kinds of taxes. The idea that pollution taxes can boost total output seems bizarre to me. This can happen only if the government will use the money in an efficient manner—highly unlikely—or if you estimate the environmental benefits as very high and include them in an output or GNP figure—highly uncertain economics.

Second, while it is correct to point out the problematic aspects of courts and tort law in protecting private property rights, the article assumes that collective action can get better results. Furthermore, I get the feeling the author has accepted the view that air pollution today is killing people. There just isn't credible scientific evidence of that happening in the United States. Studies of air pollution have indicated there can be some lung impairment, but in virtually all cases, I believe, this is reversible. I have seen no epidemiological evidence showing deaths from current air pollution levels, even in Los Angeles. Toxic compounds can kill also but not at the levels of normal emissions. Actual deaths from toxic compounds are usually traceable to specific sources, and dealing with them is perfectly compatible with a tort system. In fact, the tort system is more worthy of attention than the article suggests. Common law is the "road not taken" in pollution control.

*Jane C. Shaw*
*Political Economy Research Center*
*Bozeman, Montana*

**Mr. Marshall replies:** I should have said that Ballard and Medema conclude that pollution taxes, properly applied, would increase total welfare, not necessarily total output. As any Russian knows, higher output need not translate into greater well-being.

There is widespread and credible epidemiological evidence—published in such peer-reviewed journals as *American Journal of Epidemiology*, *Environmental Research*, and *Governmental Health Perspectives*—that particulates and sulfur aerosols kill thousands of people with respiratory problems each year; this effect accounts for the bulk of social cost estimates of pollution in most air basins. Prolonged exposure to some toxic emissions, possibly including benzene and formaldehyde, probably also causes a few fatal cancers, even if the risks do not justify the expensive countermeasures called for in the Clean Air Act amendments of 1990.

Unfortunately, it is easier for epidemiologists statistically to estimate total deaths from these sources than to pinpoint specific deaths caused by any one source. It's hard enough to tell for sure the cause of lung cancer among uranium miners or asbestos workers who smoke. The tort system's inability to assign specific responsibility for the causes of some illnesses should not become an excuse to ignore diffuse environmental health risks, any more than public ignorance and hysteria should become an excuse for heavy-handed regulation of minute risks.

That said, I applaud efforts by the Political Economy Research Center to discover and promote solutions to environmental problems through strict enforcement of property rights rather than collective and all-too-often fallible government action.

## Striking Back

On reading Michael McMenamin's excellent article, "Picking on Scabs" (Apr.), I thought more and more about an early Peter Sellers movie. In it he plays a socialist labor

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**2nd Prize of $10,000** to the National Center for Policy Analysis, Dallas, Texas, for *Patient Power: Solving America's Health Care Crisis*, by John C. Goodman and Gerald L. Musgrave

**3rd Prizes of $2,500 each** to the Pacific Research Institute for Public Policy, San Francisco, California, for *The Heated Debate: Greenhouse Versus Climate Reality*, by Robert C. Balling, Jr.; and the IEA Health and Welfare Unit, London, United Kingdom, for *Families Without Fatherhood*, by Norman Dennis and George Erdos

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The winning entries are those which, in the opinion of the judges, have made the greatest contributions to the understanding of the free economy during the past two years. The prize money goes to the general operating funds of the independent public policy research institutes responsible for the publication of the books.

The Awards were presented to representatives of the winning institutions on May 14, 1993 at the 20th International Atlas Workshop held near Washington, D.C.

The panel of judges for the 1993 Awards consisted of John Blundell, Professor James M. Buchanan, Dr. Alejandro Chafuen, Professor Israel M. Kirzner, Henri Lepage, Norman Macrae, and Professor Antonio Martino.

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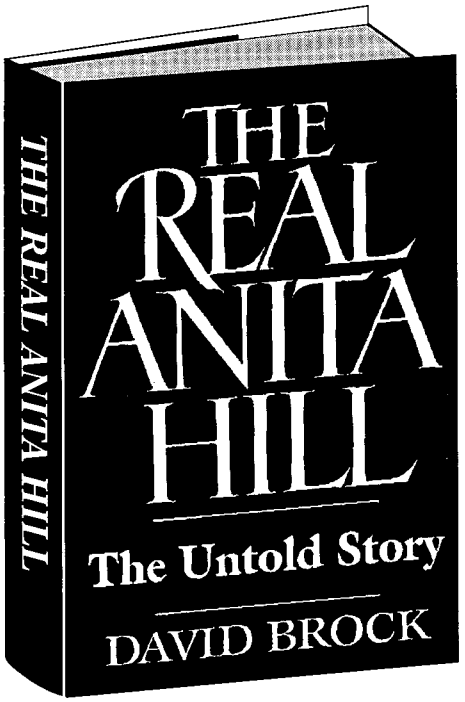


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## LETTERS

leader in England shortly after World War II. During a dispute between his union and management, Sellers comes out with the delicious line: "Since when is incompetence grounds for dismissal?"

*Lawrence D. Skutch*
*Westport, CT*

IN "PICKING ON SCABS," strikebreaking is sanitized and organized labor is damned by the testimony of one of its own. London's scab "gives more for less," but most of us, including organized labor, want to do "less for more." Today, thanks to the perversity of the American scab, we lead the world in productivity per worker, union membership is decimated, and strikers face permanent replacement.

London, however, was not a defender of organized labor. He was a romantic socialist and, as one biographer wrote, "there was no record of his having participated in a strike, walked a picket line or skirmished with strikebreakers." London's definition of a scab is endearing; a striker's would be unprintable. One is the product of the muse, the other the product of experience. London knew as little as possible of labor. After hard knocks in early life, he used fame to insulate himself from unpleasant realities.

Organized labor built the house the American scab lives in. Giving "more for less" didn't win the eight-hour day, a decent wage, a pension, health insurance, seniority rights, or job security. Sure, there were and are union abuses; but abuse by the captains of industry was primary: As "owners," they fought every attempt to improve the lot of their producers. As jobs go south or disappear in these recessionary times, the American scab should reflect on what standing hat in hand and offering "more for less" has been getting him.

*Denton Porter*
*Long Beach, CA*

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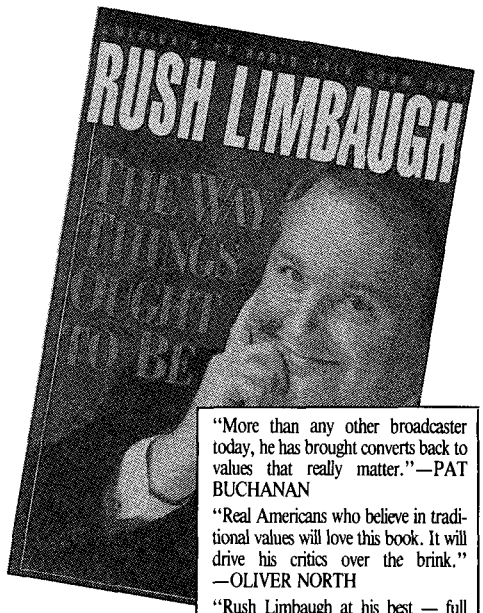


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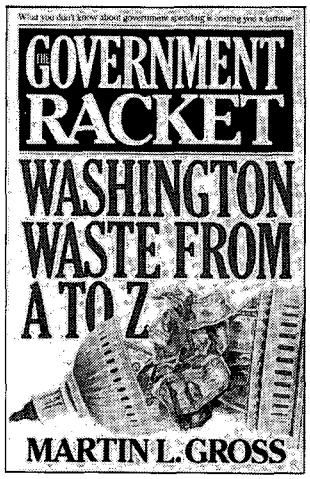


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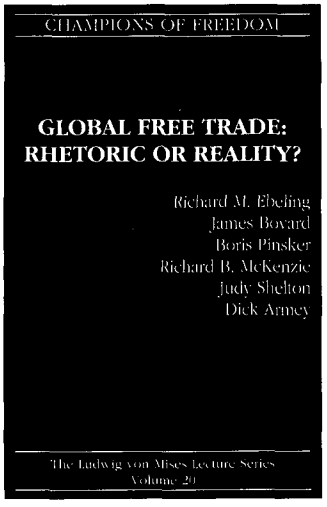


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# LETTERS

BEFORE GRADUATING from law school, I belonged to a labor union, and I found Mr. McMenamin's article amusing. The author, who says he is a "labor lawyer" (meaning management lawyer), wants to warn us of the apocalyptic results should Congress ban the hiring of replacement workers. While decrying the loss of the "last economic weapon" available to employers, he conveniently forgets to mention that allowing such hiring eliminates the right to strike. Even *Business Week* concedes this point.

While McMenamin's position is understandable, it points up a problem I have with the right. There is no lack of energy dedicated to bashing unions and trial lawyers—and rightly so—yet why do we not read about the corporate lawyers who aided in the looting of S&Ls and the raiding of pension funds?

Finally, if McMenamin truly fears socialism, he should consider what will happen when the lower-middle class, more productive yet unrewarded (wages and benefits flat for 15 years), loses its patience. Why should the people who fight our wars and bail out the treasury from the excesses of Keating, Boesky, and Neil Bush (where were *their* values?) be increasingly unable to own their own homes or send their kids to college?

*Michael S. Moore*
*San Dimas, CA*

**Mr. McMenamin replies:** Peter Sellers is right. Incompetence has never been grounds for dismissal in a socialist economy.

Mr. Porter is wrong. Jack London was both a dedicated socialist and a defender of organized labor, which he supported through speaking, writing, and contributions throughout his career. He deserves better than Mr. Porter's dismissive and false claim that "London knew as little as possible of labor." London's definition of the scab is not "endearing." The term Mr. Porter is searching for is "honest." But if he wants an unprintable definition, he need go no farther than London:

"After God had finished the rattlesnake, the toad and the vampire, He made a SCAB, a two-legged animal with a corkscrew soul, a water-logged brain, and a combination backbone made of jelly and glue. Where others have hearts, he carried a tumor of rotten principles....No man has a right to SCAB as long as there is a pool of water deep enough to drown his body in, or a rope long enough to hang his carcass with. Judas Iscariot was a gentleman compared with a SCAB. For betraying his Master, he had character enough to hang himself. THE SCAB HASN'T!"

As for Mr. Porter's claim that "organized labor built the house the American scab lives in," I don't think so. American productivity—giving "less for more"—created the prosperity that permitted shorter work hours, higher wages, etc. Trade unions fought that productivity every step of the way, enabling incompetent management to nearly destroy the U.S. automobile and steel industries.

As for lawyer Moore, I never claimed to be a "labor lawyer." That is rapidly becoming an archaic term as the ranks of organized labor continue to decline. Most of us are now primarily "employment lawyers," advising and defending companies in connection with the myriad government laws and regulations pertaining to the employment relationship—regulation that has done a lot to make unions obsolete.

And I didn't "forget to mention" that allowing permanent replacements "eliminates the right to strike" because it is demonstrably not true. The only thing the ability to hire permanent replacements eliminates is an employee's right to a job for life, which is what the proposed strike-replacement legislation will virtually ensure.

Finally, far from being defenseless, companies will need their lawyers more than ever, especially if Congress adopts, as I believe they will, a compromise permitting the hiring of permanent replacements so long as companies can prove they were required to do so as a matter of business necessity. Who do you think employers are going to hire to help them prove business necessity? Hint: It won't be unemployed doctors. You made the right choice in going to law school, Mr. Moore. Bill Clinton is going to be good for the profession. Unfortunately, and as usual, the rest of the country is going to end up paying for it.

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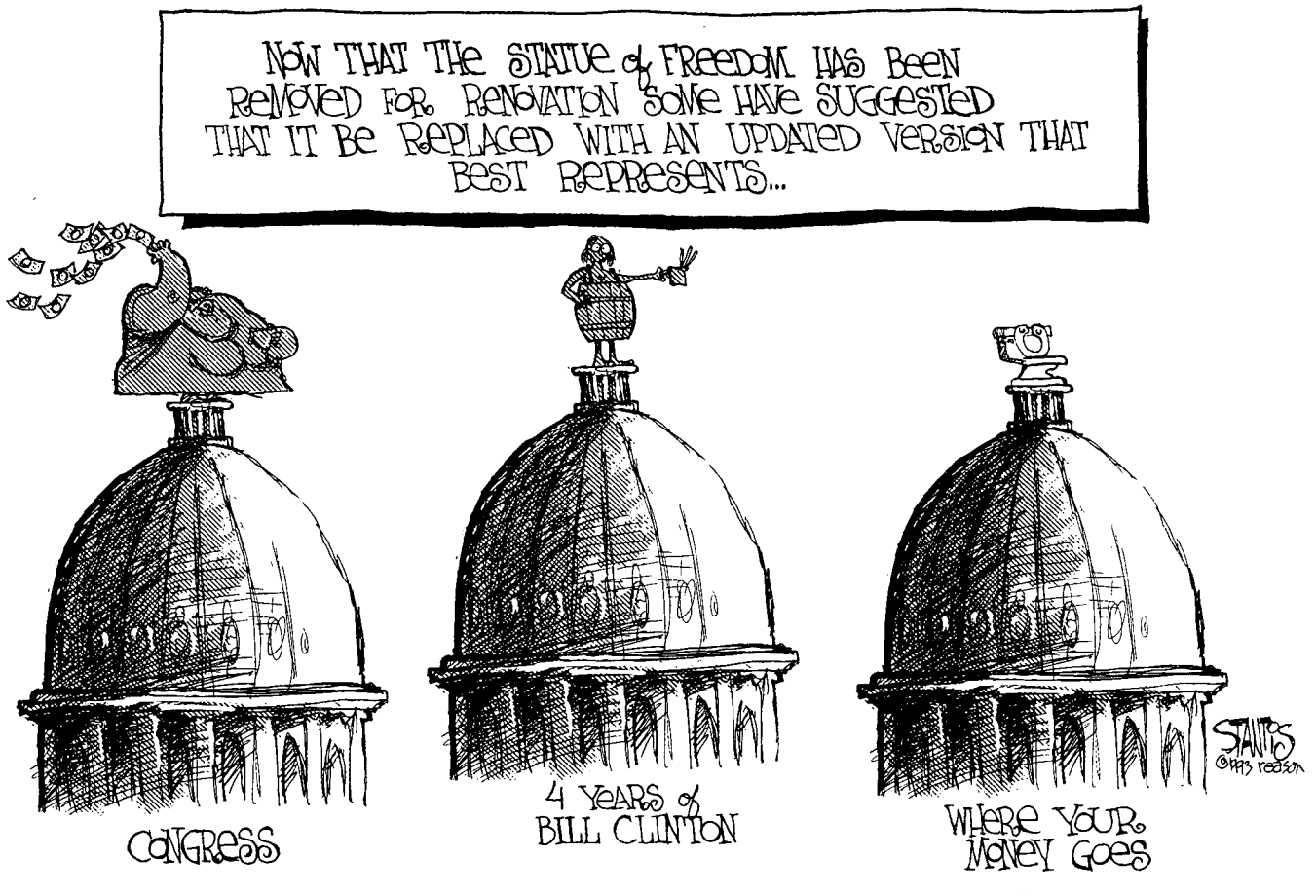
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SCOTT STANTIS

Frank Dalton is scheduled for induction into the Tacoma, Washington, Youth Hall of Fame, but he may not be able to make it to the induction ceremony. He is currently under house arrest awaiting trial for the ax murder of his mother.

In New York, state Assemblyman Daniel Feldman has called for a new law banning discrimination against people based on their weight or their height. Feldman was moved to introduce the bill after numerous complaints from fat women that they are discriminated against in employment and harassed on buses by fellow passengers. Some fat people, Feldman said, even complained that their doctors had blamed their obesity for various health problems they suffered and told them to lose weight.

Meanwhile, in California, Philip Hart has sued the Cult Awareness Network, an organization that tracks religious cults and provides support for former cult members, for discrimination. He claims that he wasn't allowed to join because he is a practicing Scientologist.

In Las Vegas, city officials are concerned that tourism might suffer because striking union members have been videotaped beating up guests outside the Frontier Hotel. Security cameras have caught at least three people being assaulted by culinary workers on the picket line. But union secretary Jim Arnold claims that the picketers were just "exercising their constitutional rights."

John Dillinger once actually escaped from prison by carving a bar of soap into the shape of a gun and painting it black with shoe polish. One wonders what inmates in New York's Mount McGregor Correctional Facility were thinking when they brought a cake shaped like a penis to a guard celebrating his birthday. In any event, officers at the facility have been reprimanded for allowing them to do it.

In Pennsylvania, a Penn State student went to police with a most unusual complaint. Seems that she gave a man a $1,200 stereo to take a final exam for her. The man flunked the exam, so she wanted her stereo back. Now both are under investigation for violating a state law against selling academic work. In addition, the university is conducting a probe to see if school rules were violated.

And in Virginia, suspected drug dealer Alfred E. Acree Jr. was surrounded one night by police. So he ducked into some nearby woods to escape them. But no matter which way Acree turned, the police found him. Quickly catching up to Acree and arresting him, the police revealed that they had been able to spot him because he was wearing brand-new L.A. Gear Light Gear athletic shoes. Lights on the battery-powered shoes flared every time his feet touched the ground.

The University of Arizona has been under fire lately from environmentalists and local Indian activists over a telescope it is building. Originally, the facility was to be named after Christopher Columbus, but some people were incensed that the university would honor the man responsible for the rape of the Americas and the genocide of the red man. So officials have announced that the facility will be called the Large Binocular Telescope.

In Wyoming, Richard Osborn has sued Emporium Videos, a Casper store that sells adult materials. Osborn claims that he bought the video *Belle of the Ball* because the cover box gave the impression that it starred actress Busty Belle, but Ms. Belle appeared in the film for only eight or nine minutes. So Osborn wants his $29.95 back plus more than $50,000 to compensate him for the pain and suffering he experienced. Osborn claims to have had an asthma attack caused by the stress of being ripped off.

New York City has announced that anyone with a college degree applying for the jobs of staff analyst or caseworker will automatically get 70 bonus points on the civil-service exam and that anyone with any degree of experience will get 30 more. Seventy is passing, 100 is the maximum score on the exam.

**—Charles Oliver**

CHIP BOK

## Invitation to Sue

In Connecticut, three mothers of asthmatic children are suing McDonald's, Burger King, and Wendy's for providing designated smoking areas. Their attorney, Robert Farr, told *The New York Times* that asthma is a disability and, because of the Americans with Disabilities Act, the restaurants must accommodate these kids by kicking out smokers.

"HOLD MY CALLS, MISS FINCH - I'LL BE IN COURT FOR THE NEXT FEW YEARS TRYING TO FIGURE OUT WHAT THE AMERICANS WITH DISABILITIES ACT MEANS."

When Congress approved the ADA in 1990, it was sold as a well-intentioned effort to provide "reasonable accommodation" for disabled people. Instead, the bill has become a bonanza for litigators and a menace to employers.

Since the ADA's first employment provisions took effect on July 26, 1992, the Equal Employment Opportunity Commission has received more than 7,000 complaints against businesses and government agencies—1,600 of them in March 1993 alone.

While the EEOC does not have the power to enforce the employment provisions of the ADA, the agency can recommend a settlement or even sue a company. Consider the first ADA suit, filed in Chicago last November. In 1987, Charles Wessel, the executive director of AIC Security Investigations Ltd., was diagnosed with lung cancer. By 1992, the cancer had spread to his brain. His doctors said he had six months to live.

The company claimed Wessel could no longer perform his job because of his illness and the side effects of his medication. When Wessel refused the company's offer to retire, he was fired. The EEOC sued on Wessel's behalf, and a federal court ruled that the layoff violated the ADA. He received $572,000 in back pay and damages. (Interestingly, EEOC statistics show that 48 percent of its complaints are for employees who were fired; only 21 percent are against firms that allegedly fail "to provide reasonable accommodation.")

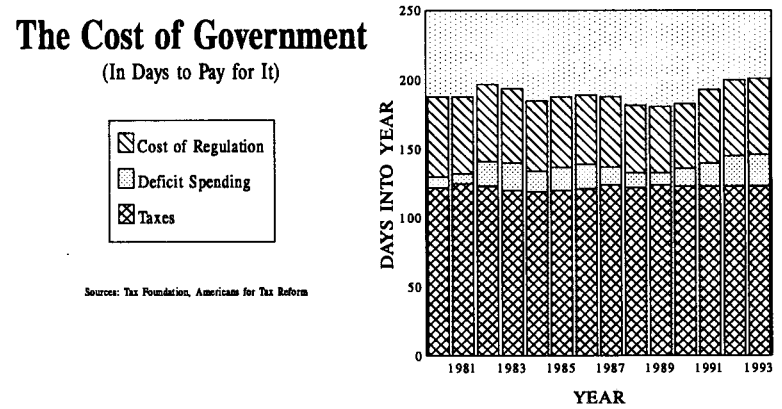
Taxpayers are also directly at risk. In February, a federal district judge ruled that, whenever Philadelphia repaves a city street, the curbs must have wheelchair ramps. Judge Harvey Bartle ruled that the language in the public services section of the ADA equates repaving streets with "new construction and alteration." The additional cost to Philadelphia taxpayers: $8.5 million in fiscal year 1994.

No one has yet estimated the compliance costs businesses and taxpayers have paid or will pay to enforce the law. As an attorney who helped write the law's regulations says, "Nothing in the ADA prevents the costs [of compliance] from exceeding the benefits. Somebody is going to have to pick up the tab."

*—Claire Chatelin*

## Day After Day

Tax Freedom Day, the date on which the average American has earned enough money to pay his tax bill for the year, is a dramatic way to illustrate the burden of government. But it doesn't really go far enough. The Tax Foundation reports that Tax Freedom Day this year was May 3, but the average American did not earn enough to cover total state, local, and federal government spending (including a federal deficit of $322 billion) until May 26, more than three weeks later. And Americans for Tax Reform calculates that paying for federal regulations, state worker's compensation, and bad tort laws will take nearly two months more (until July 19). Cost of Government Day, combining taxes, deficit spending, and regulatory costs, is later this year than ever before.

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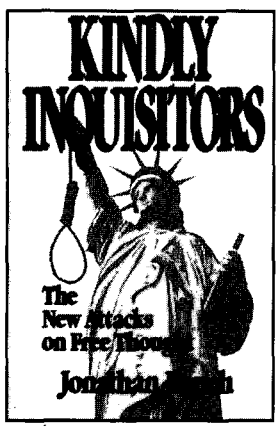


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## Packing the Prisons

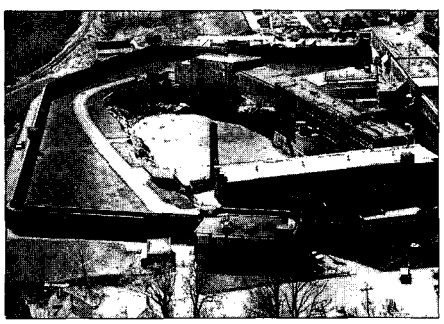
Although the war on drugs reached its publicity peak in the late 1980s, it continues to fuel a steady increase in the U.S. prison population. The Bureau of Justice Statistics recently announced that the number of inmates in state and federal prisons reached an all-time high of 883,593 at the end of 1992. That's 329 per 100,000 U.S. residents, up from 139 in 1980.

The incarceration rate is growing even though personal and household crimes have declined by about 25 percent since 1980. Justice Department statistics show that the growth in the prison population is largely due to drug arrests, which more than doubled during the '80s.

In 1990, for the first time, the number of people sent to state and federal prisons for drug offenses (103,800) exceeded the number imprisoned for property crimes (102,400) or violent crimes (87,200). One-third of state felony convictions in 1990 were for drug offenses. Between 1986 and 1990, state felony convictions rose by 42 percent. Drug trafficking, which represented 13 percent of convictions in 1986 and 20 percent in 1990, accounted for 37 percent of the increase.

These arrests and convictions have had a predictable effect on the prison population. The share of state prisoners serving time for drug offenses rose from 9 percent in 1986 to 21 percent in 1990. The proportion of drug offenders in federal prisons increased from 25 percent in 1980 to 54 percent in 1990.

*—Jacob Sullum*



**The number of people in state and federal prisons reached an all-time high in 1992.**

JIM DANIELS

*California ballot – November 2, 1993*

# Parental Choice in Education

## AMENDMENT

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## BALANCE SHEET

### *Assets*

**Pig Hooey.** Clintonomics gets mugged by the pop culture. Chicago Cubs announcer Steve Stone says he's cut back on cigars because "Bill Clinton's been reaching in my pocket for those new taxes." On *The Simpsons*, when Grandpa gets checks in the mail for work he didn't do, he says, "I thought it was because the Democrats were back in power." And David Letterman sums up Clinton's economic plan: "I am your king. Bring me your gold."

**Cool Off.** Articles published in two respected journals—*Holocene* and the National Geographic Society's *Research & Exploration*—reveal the new consensus on global warming: It's benign. One article reports that Northern Hemisphere temperatures have warmed by one degree Fahrenheit since the 1850s. And the warming has occurred exclusively in winter, spring, and fall. Even alarmist James Hansen revises his predictions of rising sea levels, noting that the polar ice caps don't melt in the winter.

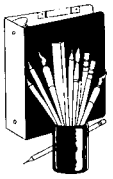
**Short-Term Solution.** Attorney General Janet Reno orders a review of mandatory-minimum sentences for drug crimes. While nonviolent offenders "serve 10 to 15 years for being minor participants on a drug boat deal," she tells *The Washington Post*, "murderers, rapists, and robbers in state courts are serving drastically reduced sentences because there are not enough prison cells."

**Empower Play.** The shaky economy grabs Robert Reich's attention. The labor secretary pulls the plug on the Clinton administration's proposed 1.5-percent training tax. (See "Training Wreck," Dec.) And Reich's department will delay its plan to increase the minimum wage until next year.

### *Liabilities*

**Taxing Trophy.** For the second consecutive year, a tax-happy governor wins the John F. Kennedy Profile in Courage Award. This year's victor: New Jersey Democrat James Florio, who (following James Carville's advice) hiked taxes early in his term then lost both houses of the legislature to Republicans. Another Carville client, W. J. Clinton, might take note.

**Juvenile Offenders.** A survey by the American Association of University Women claims that 85 percent of high-school girls and 76 percent of high-school boys have been sexually harassed. Included in the AAUW's definition of "harassment": getting mooned, hearing sexual comments or jokes, being called gay or lesbian, being pinched. May as well outlaw adolescence.



**Mismanaged Trade.** Clinton's bush-league trade advisers may blow both GATT and NAFTA. Chief economist Laura Tyson and U.S. Trade Representative Mickey Kantor push retaliation against countries that run surpluses; the Clintonites target sales of cars and computer chips rather than urge lower trade barriers. In *Fortune*, former USTR Carla Hills compares Clinton's disjointed policy to "footnotes in search of a text."

**Democratic Tyranny.** In *The Wall Street Journal*, journalist Carlos Ball shows how elected officials in Latin America keep press critics on a short leash. In Peru, President Alberto Fujimori threatens to imprison foreign correspondents. Columbia's Constitutional Court orders editorial cartoonists to "eliminate abuses and exaggeration." And in Panama, President Guillermo Endara tries to renationalize the independent newspaper *El Panama America*. Democracy isn't enough.

*—Rick Henderson*

## Take That!

Does the Constitution's Takings Clause prevent the police from wrecking your home when they search for illegal drugs? New Jersey Superior Court Judge Michael Winkelstein has ruled that the costs of executing drug raids and other actions serving "public purposes" should not be imposed on innocent property owners.

On June 27, 1991, the Atlantic City police executed a no-knock search in an apartment owned by Henry Wallace. The police arrested the tenant and confiscated 69 bags of a white powder. At least one of the bags contained heroin. During the raid, the police knocked down three doors, costing Wallace about $900 in repairs. Wallace sued the city for restitution, claiming that the destruction of his property by the police during the search constituted a taking under both the state and federal constitutions.

Winkelstein agreed. The judge ruled that the search was conducted for a public purpose (confiscating drugs) and not for Wallace's personal benefit. Wallace also did not know his tenant kept drugs in the apartment. Thus, the damage done by the police constituted a taking and Wallace was entitled to compensation.

Scott Bullock, an attorney with the Washington, D.C.–based Institute for Justice, says this may be the first time the Takings Clause has been used to protect property owners from the consequences of a police raid. Since the police had a warrant, the Fourth Amendment's prohibition against warrantless searches did not apply. And although the ruling was made in a trial court, Bullock says, "the case could be persuasive to another judge and [in] another context."

If more broadly applied, Winkelstein's ruling could demonstrate that the costs of serving the "public good" must be paid by all taxpayers and not concentrated on property owners. And these costs should be more explicit. Winkelstein writes, "The decision of how much [public spending] to allocate for the destruction of property during the execution of search warrants is a question to be determined at budget time, not by the police officer on the street."

*—Claire Chatelin*

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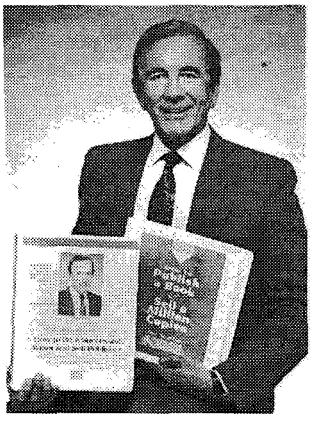

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# Competitive INSTINCT

**Indianapolis Mayor Stephen Goldsmith is serious about cutting back city hall.**

*By William D. Eggers*

The Indianapolis Department of Parks and Recreation had a problem. The end of the 1992 fiscal year was fast approaching and the department still had money in its budget. Rather than return the "extra" money to the general fund and risk having next year's budget cut by at least that amount, the department decided to buy a few supplies for a rainy day. The end result: It's a chilly day in February and sitting in the department's warehouse is a towering 40-ton mountain of chalk. The four-year supply of chalk—enough to line a baseball field with 101 miles between the bases—is now useless. To save money, the department recently switched to spray paint for lining ball fields.

When the heap of chalk was brought to his attention, Indianapolis Mayor Stephen Goldsmith didn't dress down park officials for wasting taxpayer money. He issued a press release. Calling attention to the perverse incentives that make it rational for bureaucrats to purchase 1,600 50-pound bags of chalk, the 46-year-old Republican mayor said, "The problem is they are trapped in a system that punishes initiative, ignores efficiency, and rewards big spenders."

Changing that system is what Indianapolis's mayor of 18 months is all about. Goldsmith is trying to do for big-city government what Wal-Mart's Sam Walton did for retail—revolutionize it. To survive in the 21st century, he believes Indianapolis and other big-city governments must become smaller and more efficient and foster an environment of "chaos." Job classifications, descriptions, and hiring forms will have to be tossed. "All city government really ought to be is a series of 100 projects around different clusters. We finish a project and we move on to the next one," declares Goldsmith in a statement that would be considered radical even in the private sector.

In most of America's big cities, the need for change is not too tough a sell. The signs of crisis are everywhere—decayed infrastructure, rampant crime, poor-quality basic services, flee-

ing businesses, and soaring taxes and spending. Philadelphia almost went bankrupt in 1991; Detroit has lost more than 40 percent of its population since World War II—most of those who remain are city employees; and a year after experiencing the country's second-worst riots, Los Angeles faces a $500-million budget shortfall.

For Goldsmith, getting people to "buy in" to radical change is more difficult. His problem: Indianapolis is an honor student in the classroom of big cities. It is not facing a fiscal crisis or any other kind of crisis. Taxes aren't as high as in other big cities, the bond rating is triple A, the streets are clean, and it's among the safest of all large cities.

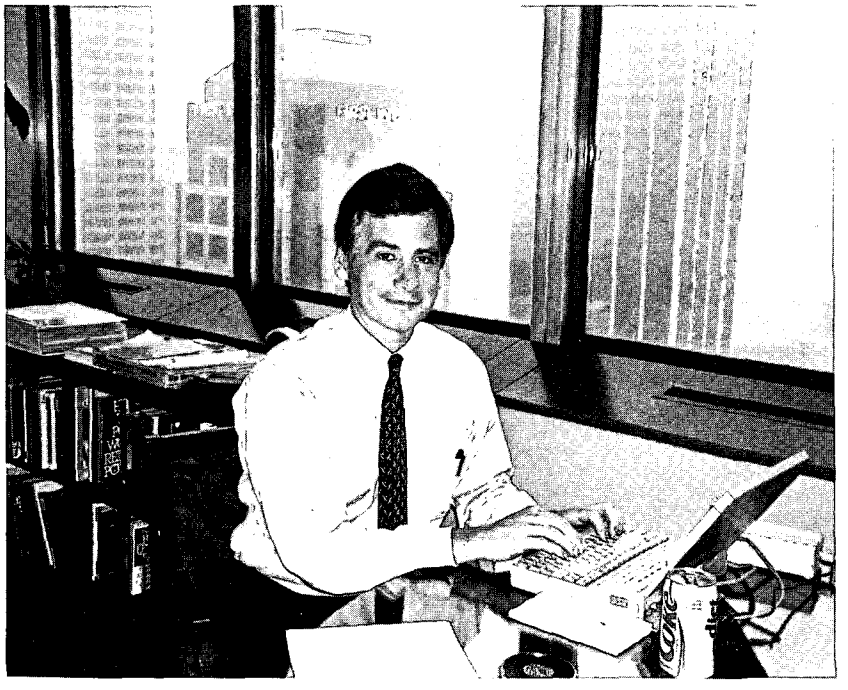
Goldsmith's predecessors, Sen. Richard Lugar and William Hudnut, both moderate-to-conservative Republicans, made national names for themselves while mayor. Lugar annexed the city's suburban townships (all of Marion County), bringing local services under city control and making it possible to have a Republican mayor in the nation's 12th largest city. Hudnut put Indianapolis on the map as the amateur sports capital of America by leveraging public money with private dollars and erecting a slew of fancy stadiums, domes, and arenas.

When Goldsmith—Marion County's former high-profile prosecuting attorney—was elected mayor in 1991, few really expected much change. "I thought that by voting for Goldsmith we would be getting the status quo. I voted for more of the same. Now I feel betrayed," says a former campaign volunteer and longtime suburban Republican. Why fix what ain't broke? If we wait, says the mayor, Indianapolis will suffer the same fate as Philadelphia, Detroit, and other troubled big cities.

Those who followed the young mayor's previous career more closely haven't been as surprised by the radical change he is bringing about. He has always been somewhat of a visionary—doing preventive maintenance on organizations most people view as working just fine. Despite no experience in criminal law, he was elected district attorney at the ripe age of 31. In his 12 years as prosecutor, Goldsmith earned a reputation not only for being tough on corruption and crime—he prosecuted more people than ever before in Indianapolis—but also for being innovative.

When he became chief prosecutor, the child-support office was collecting only $900,000 a year from deadbeat fathers. He turned the office around. Goldsmith established bonuses and productivity raises for the staff, upgraded the computer system, and contracted with a private collection agency to locate hard-to-find fathers. After 12 years, collections jumped to $36 million a year.

Since his inauguration in January 1992, the workaholic mayor has put his ideas into practice at a blistering pace that has left little time for building consensus or indulgences like sleep (though when he fell to below five hours of sleep a night he found it to be "counterproductive"). "We have only four years of our lives to make the city better for everyone in Indianapolis," says Goldsmith, who is unable to sit through an hour-long interview without frequently sneaking impatient peeks at the e-mail messages coming across his lap-top computer screen.



ROCHELLE STANFIELD

**INDIANAPOLIS** Mayor Stephen Goldsmith is working hard to do for big-city government in America what Wal-Mart's Sam Walton did for retailing—revolutionize it.

Goldsmith is gaining a national reputation for having the most ambitious privatization program in any large city in the United States. But he says he doesn't have a privatization program; he has a competition program. The distinction: His goal is not to privatize for its own sake but to break up the government monopoly. As long as there's competition, he doesn't care whether a private firm or a city department delivers the service.

"There is no great value in and of itself for privatization, as contrasted to the competitive process," says the mayor. And

that process must be approached "as the fundamental aspect of change in order for a city that is successful to stay successful."

To drive that change, Goldsmith created a private-sector advisory group called SELTIC (Service, Efficiency, and Lower Taxes for Indianapolis Commission). SELTIC is not your typical task force of corporate government-relations types who produce reports that end up unread and forgotten. Comprising nine of the city's leading entrepreneurs and more than 100 volunteers, SELTIC has not produced a single report—nor will it in the future. It is looking for results.

SELTIC's chairman, former Reagan White House political director Mitch Daniels, describes the commission's work as "antitrust for government." It is examining everything the city does and asking two questions: First, should government even be involved? If the answer is no, SELTIC recommends that the city get out of the service. If the answer is yes, SELTIC asks a second question: How can we make the service subject to competition from the private sector? More than 150 competition opportunities have been identified; more than 40 government services have already been opened to competition.

**GOLDSMITH** prefers hiring people who share his vision of government. The talk at his staff meetings moves easily from garbage collection to political philosophy.

Many of the examples are small but telling. Take window washing. Previously, windows on city buildings were washed by city crews exactly three times a year—whether they were dirty or not. The service was totally focused on inputs. Now a private company washes the windows—not three times a year, but when the windows are dirty. Microfilm operations were also moved into the marketplace. The private contractor has cut the city's cost by 61 percent, $400,000 a year, and the quality of the microfilm documents has improved.

Competition does not always result in privatization, however. To beat out private competitors, a Transportation Department crew discovered they could fill potholes with four workers, rather than eight, and one truck instead of two. The crew also asked the mayor to relieve them of the 32 Republican-patronage supervisors above them. The supervisors were laid off (the mayor took a lot of heat from his fellow Republicans), and the city crew came in with a bid thousands of dollars under the closest private bidder, cutting costs by 25 percent.

Total savings from competition run $10 million to $20 million in Goldsmith's first 18 months, says Skipp Stitt, the spirited 30-year-old lawyer who runs the mayor's competitiveness office. Stitt is a true believer, one of the young idealists around Goldsmith who share the mayor's vision of leaner, more competitive government. He says the mayor is more interested in hiring people who share his political philosophy than those who merely have technical expertise. Goldsmith regularly assigns required reading to his top staffers—the 800-plus–page tome *Liberation Management*, by management guru Tom Peters, was on a recent reading list—and staff meetings move easily from garbage collection to political philosophy. "Working for the mayor, there's a sense you're part of something larger," says Stitt.

Stitt goes on to explain that while businesses have to tightly manage their assets, governments have a giant-sized attic full of potentially valuable holdings. On a tour of the transportation department facilities, SELTIC commissioner Jean Wojtowicz, a venture capitalist who manages a $70-million portfolio, was shocked at the piles of what she calls "stuff" just lying around. "The government mentality is: If we don't use it, we better hold onto it, we might need it next year," she explains. "The problem with stockpiling all this stuff is that it takes up expensive real estate."

With the blessing of the mayor, a SELTIC team has established periodic "garage sales" of city-owned furniture, equipment, and materials. By reducing inventories, Goldsmith hopes eventually to eliminate more than 40,000 square feet of leased space, saving as much as a third of a million dollars a year. Another SELTIC team is busy trying to sell off about 750 parcels of surplus real estate—$300,000 worth has been sold so far. The mayor is even exploring selling or leasing some of the city's "family silver," such as the wastewater treatment plant (the country's largest), the City-County Building, and the airport.

Could government officials have achieved these savings without SELTIC? It's possible, but doubtful. "I think if you are inside government you're too close to the forest. Sometimes you need someone from the outside to come in and take a fresh look. Private businesses sometimes need this also," says Wojtowicz, who has advised many private companies on restructuring.

Still, line-level employees can see government waste and inefficiency that outsiders might miss. To encourage employees to expose this waste, Goldsmith created the "Golden Garbage" award, presented each month to the city employee who finds the most egregious examples of government waste. The winning employee gets a toy plastic truck glued to a piece of wood and lots of press coverage.

The first award went to an employee who found a garbage truck that broke down so often and was so expensive to repair that it cost the city $39 for every mile it operated. "Taxpayers could have hired limousines to carry away their garbage and it would have cost less than using this 'Golden Garbage' truck," declared Goldsmith when he announced the award. The truck has since been sold to some sucker.

Not everyone is thrilled about Goldsmith's top-to-bottom downsizing of city hall. The new mayor did, after all, eliminate about 450 of 4,700 full-time employees from the city's payroll in his first 16 months, including 160 mostly managerial-level employees within the first three months. The layoffs of the patronage positions angered some Republican council members and party officials. "They were upset with Goldsmith because he broke up the old boy network," says a Democratic councilman.

The driven mayor concedes he will have to spend more time building consensus in the future, which will likely slow the brisk pace of change. He's not very happy about this. Schmoozing with other politicians is just not something the technocratic Goldsmith—who friends and foes alike say is incapable of b.s.—appears very comfortable doing.

Even more of a problem has been the city work force. "Abject fear," is how one city employee described his initial reaction to Goldsmith's downsizing. In the public works department, about 20 engineers left the first year. "No good engineer wants to work for this city anymore," former public works administrator Pete Chavol told the *Indianapolis News* in December 1992. A Parks Department employee admitted that "a lot of people coasted under Hudnut. Now they have to work and many people feel miserable and threatened."

Mitch Roob, the city's 31-year-old Transportation Department director, wants to show me that not all employees have been demoralized. He takes me out in the field to see the department's pride and joy: a city crew that underbid private firms for a contract to seal cracks in the city's roads. I'm supposed to hear from them how empowered they feel and how competition has energized them. Instead, with their boss standing not more than five feet away, I'm greeted with a torrent of complaints. They're "much more stressed," "always afraid" of losing their jobs, and their "sense of security has disappeared." One crew member sums up the feelings of the group: "The mayor has rocked our boat."

Goldsmith worries about the morale problem. "Without successful buy-in from the employees of our efforts, we can't succeed," he says. To bring employees into the fold, he has set up an array of programs, including once-a-month department brown-bag lunches with the mayor, so the employees can "get the vision," and an electronic mailbag system in which employees can send him messages directly. "I have 4,000 new pen pals," says Goldsmith.

Some employees have indeed caught the entrepreneurial fever. The crack-sealing crew, for all their griping about increased stress and tougher conditions, say their major complaint is that it takes them a week to get supplies. The delay "slows us down and decreases our productivity." In fact, the crew is talking about taking their unit private. "I'm ready to do it right now," says David Walderop, the alternate crew leader, "There's money to be made out there and we all know it."

Downsizing, quantifying performance, measuring productivity, competing services, and eliminating waste are only half the revolution Goldsmith is trying to bring about in the way big cities are run. The other half is decentralizing government and empowering neighborhoods. The mayor believes governments at all levels have over-centralized decision making and superseded more important non-governmental organizations such as churches, families, and neighborhoods.

GARY MOORE/INDIANAPOLIS NEWS

**BUREAUCRACY'S** perverse incentives made it rational for city officials to buy this 40-ton mountain of chalk rather than show a budget surplus at the end of the year.

"You cannot ignore the populations in neighborhoods, do things for them, to them, and then think you're going to solve their problems in the long run," says the mayor. "You need to have a theory that empowers the people in those communities."

He has publicly embraced the outlines of a radical proposal developed at the Indiana University School of Public Affairs called "municipal federalism." It would allow for the voluntary establishment of neighborhood councils to make decisions now

made in city hall. Neighborhoods would have the right to contract with the city to maintain their own parks and sweep their own side streets and sidewalks. The people in the neighborhoods, not city bureaucrats, would determine which vacant lots are fixed up with housing rehabilitation money. Implementing this Tocquevilleian vision of getting people to seize control of public services and decision making at the neighborhood level has been Goldsmith's greatest challenge so far.

Upon becoming mayor he had hoped to duplicate in other areas of the city a successful neighborhood effort to revitalize a local park. Holiday Park, located in an upper-middle-class neighborhood, had degenerated to the point where drug dealers and male prostitutes had set up permanent shop there. Community residents were afraid to go anywhere near the park. Neighbors, fed up with the situation, received permission to take over the park and proceeded to raise $300,000 in private donations for new equipment, a security guard, and better upkeep. The former drug-infested park is now filled with picnicking families on weekends.

But SELTIC Parks Commissioner Tom Reilly hasn't found it easy to duplicate that success. The straight-shooting chairman of Reilly Industries, a multi–million-dollar, international chemical company, Reilly says most community groups just aren't interested in adopting "orphan" parks. "We haven't been particularly successful," he says, shaking his head. "It's been a very frustrating process."

Reilly points to a troubled park where there were recently two shootings. Within 200 yards of the park are six churches. If they worked together, he says, they could turn that park around. But "there's a great deal of envy between the various groups," he explains. "If you talk about turning over a park to one group, the other ones go crazy. Sometimes they'd rather the park be in bad shape than see it turned over to someone else."

And many neighborhood groups aren't very organized. They can't take on some of the repetitive functions involved in managing parks, such as weekly grass cutting, youth programs, and maintenance. But Reilly, who is known to sometimes bulldoze his way through hurdles in the business world, is not giving up. "We'll get some of them done," he pledges. "It's just happening too slowly."

**GOLDSMITH,** here visiting the Department of Transportation Sign Shop, involves himself with city workers as much as possible to help them "get the vision" of their 21st-century city.

Goldsmith is also bringing his vision of self-governance to two of the city's two most troubled housing projects. The management of the projects will be turned over to private firms—chosen by the residents themselves—for an 18-month period. At the end of the 18 months, the residents of Barton Towers and Concord Village will have the choice of staying with the private contractor, going back to the housing authority, or taking over management themselves. What makes this plan unique is a built-in work incentive: Rents will go up if incomes go up, giving the private manager motivation to find jobs for project residents.

Following the cue of Jack Kemp, whom he admires, Goldsmith criticizes regulatory barriers to home ownership and entrepreneurship. He is fond of telling the story of Paul Veyer, an artist who owns a small graphic-design shop downtown. After 20 years, Veyer decided to replace his storefront awning. The materials cost him about $150, and he figured he could put it up in a day. By the time he had gotten five different permits, hired an attorney, and submitted two plans to myriad officials, however, it was six weeks later and his bill was more than $1,000.

To identify and remove such unnecessary regulations, the mayor created a deregulatory SWAT team called the Regulatory Study Commission (RSC). The RSC also does cost-benefit analyses on all proposed regulations.

While poring through the municipal code, deregulators have found reams of outdated ordinances. Shuffleboard operators were required to obtain special licenses—as were residents who

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happened to keep milk cows in their back yards. The RSC's biggest first-year success was getting the Asbestos Abatement Commission to abandon proposed regulations which would have made the city's asbestos standards far more stringent than current state and federal regulations. Regulatory reform will save government and business $16 million to $50 million a year.

The RSC is beginning to move into more politically controversial areas. A few of the city's 28 different development-permission processes have been eliminated, but bureaucratic roadblocks have hindered progress on this front. Deregulating prices and market entry for taxicabs is on the drawing board, as is the idea of giving regulatory breaks to start-up businesses in distressed areas now designated enterprise zones.

Goldsmith has also targeted poorer neighborhoods for substantial infrastructure improvements. So why is Goldsmith, a Republican mayor whose political base is in the suburbs, expending so much time and effort on the heavily Democratic inner city? "Over the next 20 years, if we write off 100,000 people into poverty and abandon them from the marketplace, the rest of the community cannot be economically successful," he says. Right now the city's poorer neighborhoods are not in terrible shape, but he points to cities like Chicago and Detroit as warnings of what will happen unless Indianapolis takes steps to reverse the decline.

**GOLDSMITH'S** attention to the inner city has won him unlikely allies. The head of the Black Family Forum says the mayor's privatization plans will help minority-owned businesses.

Goldsmith's attention to the inner city has won him accolades from some unlikely circles. "Steve Goldsmith is the first person to come along and actually ask my people what it is they want from the mayor," says Orlando Jones, who spent 10 years in public housing and now heads up the Black Family Forum. Jones likes Goldsmith's emphasis on community policing and says privatization "will open up the door for a lot more economic opportunity" for minority-owned businesses.

Democratic City-County Council Member Jeff Golc, who represents a district where only 42 percent of the residents over 25 have graduated from high school, also praises Goldsmith. Under the previous administration his district was ignored, says Golc. "I got two calls from Hudnut [the former mayor] in four years." In a little over 16 months, Golc had already collaborated on two inner-city development projects with Goldsmith and supports the mayor's downsizing of city government and philosophy of empowering neighborhoods.

Some Republican leaders are less enthusiastic. I sat down with a group of prominent spokespeople from suburban neighborhood groups (most of them Republicans) and was somewhat taken aback by the harshness of their criticism of the mayor they helped elect. On Goldsmith's top-to-bottom restructuring of city government: "He wants to be known for reinventing what need not be reinvented." On their access to the mayor: "We know more about neighborhoods than him or his group of young CPA and corporate attorney advisers. You'd think he would listen to us, but he doesn't." On municipal federalism: "A way to shove the grunt work, the everyday essential housekeeping services, to the neighborhoods."

The criticism reflects in part a split in the Republican party between the empowerment, free-market, enterpriser types and the moderate country-clubbers. The principal concerns of these self-appointed neighborhood leaders have little to do with free-market economics. They worry about building-code and zoning violations and dislike people who operate businesses out of their homes. Their access to the mayor and their interaction with city regulators are their traditional sources of political clout. Under Hudnut they had more regulators and more access. They have lost both under Goldsmith. One of his first official acts was to lay off more than half the code-enforcement officers. And if they're mad now, they'll go ballistic when his deregulating team starts attacking restrictions on development, signage, and landscaping.

But the mayor is unlikely to back down. He is still very popular with Joe and Jane Suburbanite, who have better things to do than run around screaming about building and signage violations. And he's stubborn. "After a while most politicians get worn down into the soft solution that accommodates all the various interest groups," says SELTIC commissioner Reilly. "It can take the best folks and wear them down to the point of moral compromise, but not Stephen Goldsmith. He just keeps bullying ahead."

If Goldsmith is successful in turning Indianapolis into the country's first 21st-century city, what will city hall look like? The mayor ponders this one for a minute. "You'll have obviously smaller government, more outsourcing [privatization], dramatically increased neighborhood-based service provision, and a much higher percentage of people involved in protecting and developing their own areas. Government will act more as a skilled purchasing director, rather than a service provider."

Henry Kissinger once said, "The task of the leader is to get people from where they are to where they have not been. The public does not fully understand the world in which it is going. Leaders must invoke an alchemy of great vision." The average Indianapolis resident isn't yet aware of it, but Stephen Goldsmith is taking the city where no large American city has gone before. His vision, which combines the new and the old—a lean, service-oriented, computer-age city hall mixed with the 19th-century New England township—just may be the best hope for the future of our big cities.

*William D. Eggers is director of the Reason Foundation's Privatization Center.*

# The ENERGIZER

**Rep. John Kasich got House Republicans to agree on spending cuts. How far can he lead the revolt?**

*By Rick Henderson*

It's a humid May afternoon. In the dark basement of a packed Capitol Hill restaurant, Ohio Rep. John Kasich, the ranking Republican on the House Budget Committee, talks to a group of conservatives about budget reform. Though most of his 70 listeners are sympathetic, and not even his constituents, Kasich treats the speech like a campaign event. Speaking without notes, he becomes part policy wonk, part Dale Carnegie disciple, part stand-up comic.

In the style of Ross Perot, Kasich holds up a colorful chart with bar graphs that spell out how the proposal Republicans on his committee developed will cut the deficit more than Bill Clinton's budget. Then, in mock exasperation, he pauses and says, "Even under our program, we're bankrupting America."

Ross Perot, Warren Rudman, and Paul Tsongas have begun to convince millions of Americans that the federal deficit is a moral outrage. In February, when Bill Clinton called for "deep cuts in existing government programs"—surprise!—people agreed. For the first time since the Eisenhower administration, real spending cuts are possible.

But Clinton's budget outline, which claimed to cut the deficit by $473 billion over five years, relied mostly on tax hikes. When the president challenged critics either to get on board or to come up with a specific alternative plan, Republican leaders opted simply to gripe.

Kasich and his 16 Republican colleagues on the Budget Committee decided to call the president's bluff, however. In less than a month, they and a couple dozen staffers developed an item-by-item alternative that accomplished what Democrats and pundits said was impossible: It would reduce the federal deficit by more than Clinton's plan—$479 billion over five years—without raising taxes or affecting Social Security. The Republican plan spends $233 billion less than Clinton's, making the GOP deficit figures more credible.

"Kasich did the impossible. He got conservative, liberal, and

moderate Republicans to agree to spending cuts," says Matthew Kibbe, budget associate for Rep. Dan Miller (R-Fla.). "Kasich was the first person on the Hill to realize that people will consider specific spending cuts."

Like the tax revolt that fueled Ronald Reagan's bid for the White House, a revolution against government spending may be starting to rumble—and it, too, will need an identifiable leader. For now, at least, 40-year-old Kasich looks like the most likely prospect. After putting together three earlier budget alternatives in relative obscurity, he has become a Washington celebrity.

Friends and professional acquaintances compare Kasich favorably with David Stockman (for his grasp of the complexity of the budget), Reagan (for his populist approach to limited government), and the Energizer Bunny (for his frenetic working style). In January, the influential weekly *National Journal* named Kasich one of Washington's rising stars.

The brash, assertive Ohioan has made an impression, especially on his less-experienced colleagues. Kasich "has galvanized the Republican party and focused it on economic issues," says a freshman House Republican. "He's also made [Minority Leader Bob] Michel a one-termer."

**JOHN** Kasich, the 40-year-old Ohio representative, is the most likely leader for the coming revolution against government spending—beginning with his alternative budget package.

Kasich's first budget-cutting experience came as a state senator in Ohio. In 1978, four years after graduating from Ohio State University, Kasich unseated a veteran Democrat by visiting every home in his Columbus senate district at least once.

Mary Anne Sharkey, politics editor of the Cleveland *Plain Dealer*, was the newspaper's Columbus bureau chief at that time. "John was thought of as a smart-alecky kid," she says. "He was the type of guy who would go to the floor of the Senate and make a speech on any topic."

In 1980, Ohio's $4.9-billion budget was $400 million in the red. The state constitution requires a balanced budget. The legislature planned a tax increase. "I didn't want to raise taxes," Kasich says. "[My opponents] said, 'You're being irresponsible,' which is what they say every time you don't want to vote for tax increases in politics. So I put my own budget together." Kasich proposed $400 million in spending cuts.

His budget alternative didn't pass, but his efforts got the attention of his constituents, a mixture of affluent suburbanites, blue-collar Republicans, and Reagan Democrats. In 1982, he won a seat in the U.S. House of Representatives—the only Republican that year to unseat an incumbent Democrat who hadn't been gerrymandered out of his district. Kasich, says Sharkey, maintains "a real understanding of the lunch-bucket crowd."

House staffer Kibbe, a former Republican National Committee economist, concurs. He calls Kasich "the first Republican since Ronald Reagan to put a populist spin on limited government. He constantly talks about how markets help normal people and how government hurts normal people."

During the budget debate in March, Kasich went on the House floor to excoriate Clinton, who promised during the campaign to raise taxes on only the rich. "There are only two sets of people being taxed in America under [Clinton's] plan," Kasich told his colleagues. "Millionaires and anybody who drives a car or breathes a drop of air."

"When the American people pull into the filling station and pay higher gas taxes," he warned, "and when they find out [the taxes are] not being used to reduce federal spending [but are] being used to build a bigger Washington, D.C., that is when you are going to find out about the outrage."

Deficit reduction sounds easy. Just pass a balanced-budget amendment, or spending caps, or a deficit-reduction plan like Gramm-Rudman-Hollings. No problem.

Such procedural reforms are important. They set limits on overall government spending and permissible levels of debt. When times are good and government revenues surge, a freeze on new spending or a cap on the growth rate of some programs might

RICHARD A. BLOOM

get the deficit down. But when a slow economy retards tax collections, the president or congressional leaders must go through the budget line by line, find specific programs to cut, and explain why.

This is no simple job, even when a big-government opponent like Ronald Reagan occupies the White House. Norman Ture, president of the Institute for Research on the Economics of Taxation, was undersecretary of the Treasury in the first Reagan term. Enacting spending cuts is difficult, Ture says, because every government program explicitly benefits somebody, and "most people probably couldn't name 15 line-items in the entire budget."

Ture recalls a conversation he had with then-deputy budget director Lawrence Kudlow. "I asked Larry why he couldn't go through the budget, pick a few programs, explain why they were unnecessary, and just eliminate them. Larry told me there weren't enough resources in the [budget office] to do it."

## HOUSE BUDGET

(in billions of dollars)

| | 1994 | 1995 | 1996 | 1997 | 1998 |
|---|---|---|---|---|---|
| **DEMOCRATS** | | | | | |
| SPENDING | 1,495 | 1,563 | 1,610 | 1,663 | 1,745 |
| TAXES | 1,242 | 1,326 | 1,406 | 1,479 | 1,546 |
| DEFICIT | 253 | 237 | 204 | 184 | 199 |
| **REPUBLICANS** | | | | | |
| SPENDING | 1,462 | 1,503 | 1,551 | 1,619 | 1,708 |
| TAXES | 1,214 | 1,290 | 1,355 | 1,413 | 1,480 |
| DEFICIT | 248 | 213 | 196 | 206 | 228 |

Source: Budget Committee Report, U.S. House of Representatives, March 15, 1993

Kasich's Republican alternative, then, is a remarkable accomplishment. For starters, there's motivation: Since hyperactive Democrats control both ends of Pennsylvania Avenue, they have the votes to ram through any package of taxes and spending they please. Why would Republicans, who could never pass their own budget, waste their time proposing specific cuts? It would have been easier to carp at Clinton.

The Republicans were also outgunned. Clinton could call on more than 500 employees at the Office of Management and Budget, plus the 23 Democrats on the Budget Committee, their 23 budget associates, and the 50 permanent Democratic Budget Committee staffers. By contrast, the Republicans have 17 committee members, their budget associates, and a dozen staff members and interns.

In addition, congressional Democrats announced they would vote on Clinton's budget in mid-March, a couple of months earlier than usual. The Republicans had to move fast.

Kasich decided to ask his Republican colleagues to go ahead anyway. "To just sit back and criticize Clinton without a manageable, credible alternative is a dreadful mistake," he told them at a committee meeting. "We didn't come here to be potted plants."

Kasich divided the Republicans into seven working groups: national security; economic growth/budget process; health-care reform; human empowerment (a.k.a social services and entitlements); physical capital (transportation and housing); natural resources and science; and government management. They first tried to propose a five-year budget that reduced net spending in every area except health care, where they tried to cut spending growth. Their long-term goal: a balanced budget.

Committee members and staffers say they treated their meetings as seriously as if they were putting together a budget that might pass. Not everybody got what he wanted. For instance, Clinton had proposed $57.1 billion in agriculture spending over five years. Freshman Rep. Miller of Florida says he urged the Republicans to spend less than Clinton, but to no avail. The Republicans proposed $61.7 billion for farms.

Similarly, some committee members asked for defense cuts comparable to Clinton's unspecified $112 billion in reductions. At Kasich's insistence, however, the Republicans agreed to no more than $60 billion in cuts.

In early March, each member brought his own proposal to a meeting at which they "marked up" the Republican alternative. "All 17 of us sat around a table and traded off for six-and-a-half hours," Kasich says. His goal was a budget proposal all the Republicans would back. In the end, only freshman Rick Lazio of New York didn't sign on.

The Republican budget highlights the ideas of empowerment: provide more services for less money while giving individuals more choice. For Medicaid, the committee borrowed Arizona's managed-care program, which enrolls welfare recipients in health-maintenance organizations. To cut spending on public housing, they resurrected one of Jack Kemp's favorite ideas: Stop building new public-housing units (and paying for the maintenance they require) and give tenants housing vouchers to shop for privately owned apartments.

The proposal includes a plan Rep. Chris Cox (R-Calif.) introduced in 1991, which divides the budget into well-defined categories, sets caps on how much Congress can spend on each category, and requires super-majority votes before it can spend more. And it contains the debt buy-down measure proposed last year by Rep. Robert Walker (R-Pa.) and endorsed by George Bush. The Walker plan would let taxpayers use their tax returns to designate as much as 10 percent of their income-tax payments to reduce the federal debt; unlike Clinton's deficit-reduction "trust fund," the Republican proposal requires mandatory dollar-for-dollar spending cuts to match the 1040 check-offs.

The program also halts federal land purchases for five years, abolishes the Interstate Commerce Commission, and prevents military retirees from getting cost-of-living increases until they reach age 62. "You don't have to invent every idea," Kasich says, "as long as you don't claim it's your own."

On March 11, the day after Budget Committee Republicans presented their plan, a *New York Times* editorial said the pro-

posal "calls Mr. Clinton's bluff, and deserves a serious airing." House Democrats did not agree. Inside the committee, the Republicans proposed 29 separate amendments to cut spending. Each was voted down unanimously by the Democrats.

The Clinton budget outline passed in March. But that didn't mean much. Clinton has to get the budget itself—specific taxes and spending items—through the House and Senate this summer. The House Republican alternative made an immediate impact: The day committee Republicans announced their plan, congressional Democrats proposed $63 billion in additional unspecified cuts to match the GOP challenge.

The Republican proposal also made the White House take spending-cut fever more seriously. Just before the May 27 House budget vote, such centrist Democrats as Rep. Charles Stenholm (Tex.) and Sen. David Boren (Okla.) brought forward their own deficit-cutting plans, which would have eliminated most of the president's proposed tax hikes.

While Kasich championed the Republican alternative on the House floor, Clinton and his allies worked feverishly to keep enough Democrats on board to pass his budget. Commenting on the arm-twisting Clinton had to employ, Rep. Charles Taylor (R-N.C.) said, "You can hear bones breaking all over the place. It sounds like a chiropractor's office." Clinton finally won the vote, 219-213, but lost 38 House Democrats in the process. As this story goes to press, senators and representatives are home for their Memorial Day recess, talking to constituents and facing three more budget votes upon their return.

Cox says Republicans will use their budget plan to haunt Clinton and the big-spending Democrats. "At every turn," he says, "we will confront Clinton and his liberal allies with the chasm between their promises and their new deficit spending."

John Kasich may have labored in obscurity before the budget battles made him famous. But his wasn't really an overnight success. This wasn't even Kasich's first attempt to cut the budget. In 1989, his first year on the Budget Committee, he proposed a freeze on defense and discretionary spending. It got 30 votes. His 1990 alternative got 106 votes. By 1991, his option had received 114 votes, more than President Bush's.

Nor did he make his name as a partisan Republican. Until he won the ranking Republican's position last December, most of the outside attention he had generated was for his work with liberal Democrats. He joined with Pat Schroeder (Colo.) to reform the Joint Chiefs of Staff, Ron Dellums (Calif.) to cut funding for the B-2 bomber, and Barney Frank (Mass.) and Charles Schumer (N.Y.) to cut farm subsidies.

His biggest successes were on military issues. When he got to Washington 10 years ago, Kasich sought only one committee appointment: Armed Services. ("I wanted to be able to 'free lance' on other issues," he says.) A supporter of the Reagan military buildup, he nonetheless considers himself a "cheap hawk." On Armed Services, he worked with Democrats who wanted to root out the dreaded $600 toilet seats. "Unlike a lot of conservatives," he says, "I think the Pentagon needs the same scrutiny as other [government] departments."

In 1986, over the opposition of Defense Secretary Caspar Weinberger, Congress passed the Goldwater-Nichols Reorganization Act, the most sweeping military reforms since the Truman administration. Before these reforms, the Joint Chiefs of Staff had been a formless committee that spent much of its time protecting the turf of each armed service. Critics of the Pentagon blamed the military's "cover your ass" mentality for permitting weapons cost overruns and for disasters like the botched attempt to release the Iranian hostages in 1980.

The Goldwater-Nichols bill made the chairman of the Joint Chiefs the principal military adviser to the president and gave the chairman more authority to direct the operations of the armed forces. The seamless coordination of U.S. armed forces during the Gulf War was one visible result of this Pentagon reorganization. To push these reforms past the Pentagon establishment, dovish Democrats like Schroeder had to have the support of congressional hawks—Sens. Barry Goldwater (R-Ariz.) and Sam Nunn (D-Ga.) and Rep. Bill Nichols (D-Ala.). Kasich was the critical House Republican.

He also navigated the military base-closing bill through the Armed Services Committee. Rep. Dick Armey (R-Tex.) got credit for developing the plan, which set up an independent commission to list which bases to close and requires Congress to close all of the bases or none of them. But Armey wasn't on the Armed Services Committee; Kasich was.

Kasich praises the open, bipartisan spirit of the Armed Services Committee. In contrast with the Budget Committee, he says, "we always tried to accommodate one another." He says Armed Services Democrats always told him, "If you've got a good idea, great, let it shine." That's the spirit with which he rallied his own party's coalition on the budget.

Back in his office, an hour after the lunch (which he didn't get the chance to eat), Kasich munches on a grilled cheese sandwich and bean soup while we talk. Last year rumors had him running against Democratic Sen. John Glenn; now he's supposedly facing Sen. Howard Metzenbaum next fall. Congressional staffers and a couple of junior members I talked to see Kasich as a potential party leader in the House.

I ask Kasich about his ambitions. He brushes the speculation aside. Sort of. "All I'm worried about now is, am I going to get my workout in tonight?" he laughs.

After working in obscurity for a decade, Kasich is finally attracting attention. Why? "Now I have a title," he says. "In this town, it's not always what you say, it's where you say it from." The new-found attention, he says, means that reforms eventually may be possible.

*Eventually* is the operative term. If there is a spending revolt on the horizon, he says, it hasn't yet dawned on the members of Congress. But that may change.

Outside the Beltway, Kasich says, Americans are growing tired of a government that taxes too much and still can't pay its bills. "People in this country think government stinks," he says. "They don't want it messing with their lives. They want to see this stuff changed, cut back, fixed. We're not Santa Claus here." ■

*Rick Henderson is Washington editor of* REASON. *Intern Claire Chatelin provided research assistance for this article.*

# ILL-GOTTEN GAINS

*Police and prosecutors have their own reasons to oppose asset forfeiture law reform.*

***By Richard Miniter***

On the morning of October 2, law-enforcement officers burst into the home of multimillionaire Donald Scott near Malibu, California. Confronted by the armed men, his wife cried out. Scott, half asleep and partially blinded by a recent eye operation, emerged from a bedroom holding a loaded .38-caliber revolver. When Scott failed to obey commands to drop the weapon, Los Angeles County Sheriff's Deputy Gary R. Spencer shot him twice in the chest. Scott died shortly thereafter.

Relying on a tip from an informant and some aerial surveillance, Spencer had obtained a search warrant for Scott's property and assembled a team of local, state, and federal law-enforcement agents. They expected to discover a large cache of marijuana. But an exhaustive search of the house and grounds found no trace of illegal drugs or drug paraphernalia.

After a five-month investigation, Ventura County District Attorney Michael D. Bradbury, whose jurisdiction includes Scott's property, released a report in March that said the raid was unjustified. He noted that Spencer's informant claimed in September 1992 that thousands of marijuana plants were growing on Scott's property. Yet two sets of aerial photographs taken that month showed no sign of cultivation. A Drug Enforcement Administration agent reported seeing 50 plants during an overflight on September 23, but Bradbury called that evidence inconclusive. Looking down at the property from a height of more than 1,000 feet without the aid of binoculars, Bradbury said, the agent could not have positively identified the plants as marijuana.

Bradbury discovered that Spencer had obtained the search warrant for the raid using evidence and testimony from the judge who issued it, Ventura Municipal Court Judge Herbert Curtis III who said that a federal reconnaissance team had found no marijuana on Scott's land when they searched parts of it on two occasions a week earlier. Furthermore, Bradbury said, several affidavits used to support the request for a search warrant were either false or misleading.

Defending his department's actions, Capt. Larry Waldie, head of the sheriff's narcotics bureau, alluded to "historical documentation" showing that Scott's wife, Frances Plante, had been involved with drugs. Plante was convicted of possessing a small amount of marijuana in 1991, the year before she married Scott. Police sources also told the Associated Press that Plante had been seen with $100 bills—hardly remarkable for the wife of a multimillionaire. Nicholas Gutsue, the executor of Scott's estate, finds the drug charge puzzling, since Scott was "known to be fanatically anti-drug."

Gutsue notes that Scott had repeatedly refused to sell his scenic 200-acre ranch to the National Park Service, which wanted to make it part of the Santa Monica Mountains National Recreation Area. Gutsue suspects that a deal was struck: After the raid, the police would seize the $5-million ranch under federal forfeiture law, which allows the government to take property used to commit a drug crime. The Park Service would buy the land, and the other participating agencies would share the proceeds. Gutsue notes that Park Service rangers took part in the raid, along with county, state, and federal drug warriors.

Park Service spokeswoman Jean Bray dismisses Gutsue's

theory as "nonsense." She says three armed Park Service officials participated in the raid at the request of the Sheriff's Department but never entered Scott's house, remaining in the "perimeter containment area."

Whatever the Park Service's role, Bradbury's report cited forfeiture as an important motivation for the search. He noted that Spencer, the lead investigator, "knew that if marijuana were found growing, or if narcotics were found in sufficient quantity, it was possible that a very valuable piece of real estate would be forfeited to the government with the proceeds of a sale going to the Los Angeles Sheriff's Department."

Waldie denied Bradbury's allegation, telling the *Los Angeles Times* that "forfeiture was never the objective in this case." But two agents, including a forest ranger, told the *Times* that possible seizure of Scott's land was mentioned at a briefing just prior to the raid. And the Sheriff's Department had shared two documents with a federal drug agent: a property-appraisal statement and a parcel map on which the agent noted that a nearby 80-acre plot had sold for $800,000. Bradbury observed: "We find no reason why law enforcement officers who were investigating suspected narcotics violations would have any interest in the value of the ranch or the value of the property sold in the same area other than if they had a motive to forfeit that property."

*The raid on Donald Scott's Malibu ranch is a chilling reminder that, despite exposés and calls for reform, asset-forfeiture statutes continue to pervert law enforcement.*

The Donald Scott case is a chilling reminder that, despite a series of exposés and calls for reform, asset-forfeiture statutes continue to pervert law enforcement and victimize property owners. Beginning with a path-breaking 1991 series in *The Pittsburgh Press*, the news media have dramatized forfeiture abuses, offering the stories of people who have lost homes, boats, cars, trucks, and cash to the government because police believed the property was connected to a crime. Some of these people were convicted of minor offenses, but many others were never charged with anything. The *Press* found that owners are not charged in most federal forfeiture cases, and investigations of state forfeitures in Florida, Missouri, and Illinois confirm that pattern. Publicity about such cases has aroused widespread indignation and prompted legislative hearings at the state and federal levels.

But aside from some modest protection for innocent property owners growing out of a recent Supreme Court case, forfeiture laws remain as much of a menace as ever. Indeed, police and prosecutors are lobbying for state laws that would make it even easier to seize property. The resistance to reform is not surprising: Law-enforcement officials have a vested interest in maintaining and expanding asset forfeiture. It's a way to feed their budgets without tax increases. So, far from slowing down because of all the bad press, forfeiture is catching on. Pioneered by the feds, it has become a tool for small-town cops. Originally used primarily in drug cases, it is being extended to new areas by creative police and legislators.

Under federal provisions, law-enforcement agencies have seized assets worth more than $2.6 billion since 1985; another $1.5 billion is "in the pipeline," according to the Justice Department's Executive Office for Asset Forfeiture. There have been more than 170,000 seizures since 1985 and more than 35,000 in 1992 alone. More than $1 billion in cash and property forfeited under federal law has been transferred to more than 3,000 state and local agencies since 1986. A record $289 million was disbursed in 1991, and the figure for 1992 is expected to be even higher.

Many law-enforcement agencies have become dependent on the money. A 1990 bulletin from the U.S. Justice Department warned U.S. attorneys that they were falling short of expectations. "We must significantly increase production to reach our budget target," the bulletin said. "Failure to achieve the $470 million projection would expose the Department's forfeiture program to criticism and undermine confidence in our budget predictions. Every effort must be made to increase forfeiture income during the remaining three months of [fiscal year] 1990."

Many states have their own forfeiture laws, and state and local officials also keep an eye on the tallies. Oklahoma County District Attorney Bob Macy recently complained to *The Daily Oklahoman* that his office's forfeiture income had dwindled from $685,730 in 1991 to $350,000 the following year (out of a $3.4-million budget). He blamed the drop on local cops who prefer to turn forfeiture cases over to the feds and thereby avoid giving the district attorney a cut.

For small towns with tight budgets, forfeiture is a boon. Lenexa, a suburb of Kansas City, Kansas, with a population of only 29,000, reaped at least $250,000 from forfeitures in 1991. Police departments can even benefit from forfeitures carried out by other agencies. The Suffolk County, New York, District Attorney's Office proudly cites the forfeiture money it gives cities for new squad cars, radar detectors, and other equipment.

The forfeiture provisions of the 1984 Comprehensive Crime Control Act say that money from seizures may be used only for

ELIZABETH LARSON

"law enforcement purposes," but this can mean luxuries for police officers or prosecutors. The Philadelphia Police Department purchased a new air-conditioning system with money from asset forfeitures. And Suffolk County, New York, District Attorney James M. Catterson Jr. drives a BMW 735i seized from a drug dealer. He spent $3,412 from his office's forfeiture fund to repair the car, $300 on a watch for a retiring secretary, and $3,999 on chairs.

*Police have begun to seize the cars of suspected johns and drug buyers. Because of the expense involved in getting property back, such seizures are not likely to be challenged.*

Forfeiture laws make it remarkably easy to take people's property. (See "United States v. One Assortment of 89 Firearms," May 1990.) In a civil forfeiture case, the owner need not be convicted or even charged with a crime. Under federal law, police may seize property when they have "probable cause" to believe that it was purchased with the proceeds of a drug crime (everything from jewelry to a house) or that it was or would have been used to commit a drug crime (a car with pot in the glove compartment or cash intended for a cocaine buy). Unless the owner challenges the seizure within 30 days, posting a "cost bond" equal to 10 percent of the property's value, the government automatically keeps the asset.

If the case goes to trial, the prosecution has to prove a connection between the property and a crime by a "preponderance of the evidence." This burden of proof is considerably lighter than the "beyond a reasonable doubt" standard in criminal cases. And the government does not provide an attorney if the owner cannot afford one—which is often the case when the government has taken most of the defendant's assets.

Meanwhile, the government keeps the property. Even if it ultimately loses the case, it doesn't have to pay the owner for legal expenses, lost benefits, or damage to the property. On the other hand, home owners must still pay mortgages and taxes. Because the government has so much leverage, it can often convince people to settle for a partial return of their property, sometimes in exchange for a payment.

The upshot is that police and prosecutors often have little reason *not* to seize someone's property. Wealthy individuals like Donald Scott have valuable property that can be a tempting lure. People of modest means probably cannot afford to challenge a seizure.

The latter category includes many car owners. In cities such as Washington, D.C., police seize the cars of suspected johns in areas of prostitution. Elsewhere police seize cars idling near "known centers of drug activity" such as New York's Morningside Park. New York City seizes an average of 10,000 cars per year. In Oakland, California, the city has posted signs bearing the words "DRUG BUYERS" in a red circle with a slash through it and the warning: "VEHICLES SUBJECT TO SEIZURE!" Such forfeitures are not likely to be challenged. Say the police seize a 1990 Honda Civic, with a blue-book price of $9,050. The owner probably won't spend $10,000 in legal fees to get it back.

Whether their targets are big or merely easy, forfeiture encourages police to seek profits rather than fight crime. Needless to say, this can lead to twisted priorities, even from a drug warrior's perspective. Who wants to seize a dilapidated crack house when a suspected pot grower's mansion is there for the taking?

At a recent conference on white-collar crime, Michael F. Zeldin, former director of the Justice Department's Asset Forfeiture Office, conceded that forfeiture has encouraged the narrow-minded pursuit of seizable property: "We had a situation in which the desire to deposit money into the asset forfeiture fund became the reason for being of forfeiture, eclipsing in certain measure the desire to effect fair enforcement of the laws...."

And former New York City police commissioner Patrick V. Murphy told Congress last fall, "The large monetary value of forfeitures...has created a great temptation for state and local police departments to target assets rather than criminal activity." Murphy cited the example of a local police department that "has a financial incentive to impose roadblocks on the southbound lanes of I-95, which carry the cash to make drug buys, rather than the northbound lanes, which carry the drugs. After all, seized cash will end up forfeited to the police department, while seized drugs can only be destroyed."

Cathy Green, president of the New Hampshire Association of Criminal Defense Lawyers, says, "There's a tremendous incentive for small local police departments to target" the wealthy. She cites a Bedford, New Hampshire, case in which the police asked an informant, "Who do you know who sells drugs and has a house?" The informant replied: "Bernardi." Although they had no evidence that he was selling drugs, undercover police visited Nicholas Bernardi and asked him to obtain and sell marijuana to them. After what Green calls "persistent badgering," Bernardi gave in. He later sold them marijuana, whereupon they arrested him and seized his house for its "use in the

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commission of a crime."

After learning of the cops' persistence in convincing Bernardi to commit a crime, a jury found him not guilty. But the police refused to return his house. In New Hampshire, local law-enforcement agencies get to keep 45 percent of the proceeds from the sale of forfeited property. "One of the real concerns in these civil-forfeiture cases is the motives of the police," says Green.

In some cases the motive is obvious. In 1987, police in Maui, Hawaii, found marijuana growing in the backyard of Joseph and Frances Lopes. It belonged to their mentally disturbed 28-year-old son. He pleaded guilty and was sentenced to probation and weekly psychotherapy. The Lopeses thought the incident was behind them. But four years later a detective scouring old records for forfeitable property found their names. Federal agents seized the house, citing the 1987 drug case. The Lopeses have been allowed to stay in their home until the forfeiture trial is complete.

*Police sometimes review old cases looking for forfeitable property. Agents seized the home of Joseph and Frances Lopes four years after their son was arrested for growing pot.*

MATTHEW THAYER/THE PITTSBURGH PRESS

The case of Billy Munnerlyn illustrates how difficult it is to challenge a forfeiture. Munnerlyn once owned a small but flourishing air-charter business and had dreams of expanding. Those hopes came crashing to the ground after he agreed to fly an old man named "Sullivan" and four locked blue plastic boxes from Little Rock, Arkansas, to Ontario, California, on October 2, 1989. About three hours after the plane landed, DEA agents arrested Munnerlyn and hauled him off to Cucamonga County jail. They told him he was under arrest for conspiracy to distribute cocaine. No drugs were found on the plane.

Munnerlyn had no criminal record, but he did have bad luck. His 74-year-old passenger turned out to be Albert Wright, a convicted cocaine dealer, and the blue boxes contained about $3 million in cash. After 71 hours in jail, Munnerlyn was released. No charges were filed against him. But when he went to pick up his plane, Munnerlyn recalled in congressional testimony last year, "I found it guarded by a DEA agent. The agent told me that my jet was the property of the U.S. government and that I could not fly it or...I would be arrested for stealing government property." The government also kept Munnerlyn's $8,300 flight fee.

Munnerlyn had to rent a car to get back home to Las Vegas. He immediately began fighting for the return of his 1969 Learjet. He suffered three years of frustration and incurred more than $120,000 in legal bills. He had to sell his other three planes and his office equipment to pay his debts. Eventually, he declared bankruptcy, and for a while the one-time pilot drove an 18-wheeler, making 22 cents a mile.

Rejecting several settlement offers involving large cash payments to the federal government, Munnerlyn insisted on a jury trial. He won. "The jury ordered the government to return my jet and charter fees," he says. The judge threw out the verdict on technical grounds and ordered a new trial. In the midst of the second trial, three years into the ordeal, Munnerlyn settled, "paying more than $15,500 to buy back my own property," he says. "This isn't the legal system for which I fought in Korea."

Even getting his plane back proved to be a pyrrhic victory. As Munnerlyn learned, the government has no obligation to maintain or safeguard the property in its custody—despite charging him storage fees. His plane had been ripped apart in a futile search for drugs, and he couldn't determine how many hours it had been flown. The Learjet Co. told him it would cost more than $100,000 for repairs and maintenance to pass a federal airline inspection.

Because fighting a forfeiture is so hard, officials don't have to be careful about picking their targets. "It is kind of like the old saying, 'Kill them all and let God sort them out,' " says Scott Bullock, an attorney with the Institute for Justice in Washington, D.C. "Only now the government is saying, 'Seize it all and let the innocent sue to get it back.' "

One favored way of raking in money is searching suspected drug couriers and seizing any cash they're carrying, on the assumption that it's either proceeds from a sale or the bankroll for a buy. Allen Coulter Kidd was riding his motorcycle through Chesterfield County, Virginia, in 1991 when he was stopped by local police. The police found no drugs on Kidd, but they took him down to headquarters anyway. They seized the $2,780 in cash he was carrying and his Harley Davidson motorcycle.

The 35-year-old pleaded not guilty to the drug charges, and the case was dismissed three months later, when the government could not supply any evidence. Yet Kidd had to wait more than a year before he got his motorcycle and half of his money back. The police kept the remaining $1,390. "They come here on suspicion and take anything I own," Kidd told *The Richmond Times-Dispatch*. "It's a big joke—a joke that ain't funny."

In Volusia County, Florida, police have seized more than $8

million in cash and property in the last three years from motorists stopped for minor traffic violations. In many cases, drivers were stopped because police thought they were drug couriers, but no drugs were found. Sometimes police will cite traces of cocaine on seized money as evidence that it's connected to drug crime. But random tests find that more than 80 percent of U.S. currency is contaminated by cocaine, which adheres readily to paper and can be detected in trace amounts for months. Federal and state courts have begun to question the validity of such evidence. In April, U.S. District Judge Thomas A. Wiseman Jr. ordered federal drug agents to return $9,000 they had seized from a Nashville landscaper at an airport in 1991. "The presence of trace narcotics on currency," he wrote, "does not yield any relevant information whatsoever about the currency's history."

*Billy and Karon Munnerlyn learned how hard it is to challenge a forfeiture. After the DEA took their Learjet, they had to sell their air-charter business to cover legal bills.*

Even though such trace evidence is not likely to stand up in court, police can keep the money until the owner mounts a costly, time-consuming lawsuit to get it back. Most just give up—and the funds go into police coffers. Carey H. Copeland, director of asset forfeiture at the U.S. Justice Department, concedes that in most cash seizures the owners are "technically innocent."

Concerns about the "technically innocent" have prompted calls for reform. "We continue to be enormously troubled by the government's increasing and unchecked use of the civil forfeiture statutes and disregard for due process," George C. Pratt, a judge on the U.S. Court of Appeals for the Second Circuit, wrote in a 1992 case, *U.S. v. All Assets of Statewide Autoparts Inc.* He urged federal district courts to stay asset seizures until after the owner is convicted of a crime, arguing that "through courageous and sensitive application of their discretionary powers the district courts can then ensure that due process remains a reality and is not reduced to a mere encomium."

In *United States v. 92 Buena Vista Ave.*, decided in February, the U.S. Supreme Court offered some protection to innocent property owners. A New Jersey woman, Beth Ann Goodwin, challenged the forfeiture of a home she had purchased with money that her boyfriend, an alleged marijuana importer, had given her. The Court ruled that the "innocent-owner defense" allowed by federal law entitles Goodwin to present evidence that she did not know the money came from illegal activity. If she can convince a court, she can keep her home.

In two pending Supreme Court cases, property owners argue that forfeiture violates the Eighth Amendment's prohibition of cruel and unusual punishment and excessive fines when it imposes penalties that are grossly disproportionate. In *Alexander v. the United States*, a criminal forfeiture case, the government seized an entire chain of adult book stores and movie theaters based on the presence of a few obscene items. In *Austin v. United States*, a civil forfeiture case, the government took a North Dakota man's car-repair business and mobile home after he sold two grams of cocaine to an undercover agent. Although it upheld that forfeiture, the U.S. Court of Appeals for the Eighth Circuit wrote: "We are troubled by the government's view that any property, whether it be a hobo's hovel or the Empire State Building, can be seized by the government because the owner, regardless of his or her past criminal record, engages in a single drug transaction."

Recognizing that civil forfeiture constitutes punishment without trial, reformers argue that forfeiture should be allowed only after the owner has been convicted of a crime. This requirement would end arbitrary seizures of cash, curtail searches that are not likely to turn up evidence of a crime, and require prosecutors to establish a case before taking someone's assets. Property owners would enjoy the same protections as criminal defendants, including the presumption of innocence, the right to a prompt hearing, and freedom from cruel and unusual punishment.

Critics of forfeiture also argue that proceeds from the sale of confiscated assets should go into the government's general fund rather than law-enforcement coffers. This change would encourage police to focus on law enforcement rather than forfeiture.

But reformers who urge Congress and the state legislatures to curtail forfeiture abuses face stiff opposition from police and prosecutors, who like forfeiture and want to expand its use. The Justice Department's Copeland would like a forfeiture provision for every federal offense. Many prosecutors look to Arizona, which has the nation's strongest and broadest forfeiture laws. Unlike most states, Arizona does not give property owners a right to a jury trial. Just to file a forfeiture challenge, an owner must supply highly detailed information about the property's history. If he wins, he must pay his own legal fees; if he loses, he must pay the cost of the government's investigation and prosecution.

Arizona also allows seizure of property associated with

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"racketeering," which it defines very broadly. Under Arizona law (unlike the federal Racketeer Influenced and Corrupt Organizations Act), racketeering need not involve a pattern of activity or more than one offense. Just about any crime punishable by more than a year in prison, when committed for profit, qualifies. This includes not only biggies such as homicide, robbery, and kidnapping but also gambling, usury, drug offenses, weapons violations, obscenity, prostitution, restraint of trade, money laundering, and the sale of securities by unregistered brokers. His state's goal, says Assistant Attorney General Cameron Holmes, is " 'social engineering' accomplished through government intercession in commercial activity harmful to the economy as a whole." He sees Arizona's approach as a model for other states.

*Property like Donald Scott's Trails End Ranch can be a tempting lure. But people of modest means are also attractive targets because they can't afford to challenge a seizure.*

In California, a battle is brewing over whether to renew the state's forfeiture law, which expires January 1. The stakes are high: Californians forfeited about $56 million under the law in 1991, the most recent year for which figures are available, and police and prosecutors keep 90 percent of the proceeds from each forfeiture they handle. No conviction is required, and the prosecution has only to prove its case by a preponderance of the evidence. The government may seize land and buildings related to a drug violation and vehicles used in any manner to facilitate the sale of illegal drugs. On the other hand, the law exempts jointly owned family cars and up to $100,000 in jointly owned real property if the innocent spouse could not reasonably have known about the crime. And real property cannot be seized for marijuana offenses.

If this law expires, an earlier statute would go into effect. That law defines forfeitable property more narrowly and allows broader exceptions for community property. It requires conviction before forfeiture, except for cases involving more than $25,000 in cash or when the defendant flees prosecution. And even in those instances, prosecutors have to provide "clear and convincing evidence," a tougher standard of proof than the current one.

Sen. Ken Maddy (R-Fresno), supported by Gov. Pete Wilson, Attorney General Dan Lungren, and an impressive array of police and prosecutors, wants to extend the current law and add provisions to make forfeiture easier. He argues that "asset forfeiture is one of the most potent weapons we have in combating illicit drug trafficking. Losing this valuable weapon now would be a disastrous blow to the progress we've been making against drug criminals."

Among other things, Maddy's bill would shift the burden of proof to the accused in some cases and eliminate the community-property exemptions for homes and vehicles. It would also allow the government to take an entire tract of land if any part of it was involved in a drug crime and would permit forfeiture of real property in marijuana cases involving more than 100 plants. It would let police seize property allegedly purchased with drug money up to 10 years after the fact (the limit now is five), regardless of who the current owner is.

In testimony before the California Assembly's Committee on Public Safety last fall, witnesses urged legislators to reject Maddy's approach. Opponents included such mainstream organizations as the California State Grange, the California Bankers Association, the California Land Title Association, and the California Restaurant Association. These groups are concerned because forfeiture laws hold owners accountable for illegal activity on their property, whether they know about it or not. Business people are also worried about the "relation-back doctrine," which allows the government to seize tainted property from subsequent owners.

Witnesses noted the conflict of interest created by giving forfeiture money to police and prosecutors. As summarized by the Committee on Public Safety, "Asset forfeiture is a multi-million-dollar source of revenue for law enforcement. Thus, there is an incentive to seize property as a revenue source. Opponents state that...persons suspected of participation in or having knowledge of drug crimes rarely will be given the benefit of the doubt by those who will gain financially by the seizure. This is viewed as a particular problem in times of tight budgets."

The response of police and prosecutors who testified in favor of Maddy's bill was not reassuring. As the committee's report put it: "Proponents acknowledge the possibility of a conflict of interest, but state that strict guidelines and training are in place to prevent this from occurring. They state that they are unaware of any actual problem in this area." In other words, "Trust us."

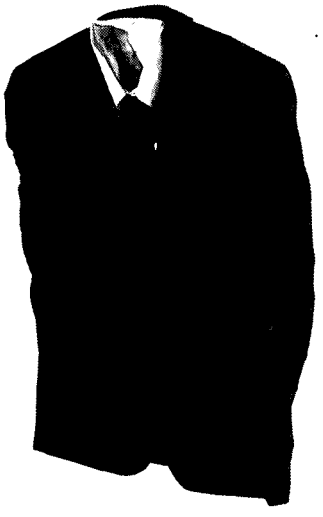
Brenda Grantland, an attorney who co-founded the civil-liberties group FEAR (Forfeiture Endangers American Rights), is skeptical. Police behavior is certain to be influenced by "the unbounded opportunity for financial gain," she says. "You can never trust the police, because they're profiting off this."

*Richard Miniter is a writer for* Insight.

ELIZABETH LARSON

A new gay rights movement seeks an alternative to in-the-closet or in-your-face. *By Carolyn Lochhead*

# The Third Way



Whether measured by the pitch of national emotion it stirs, the prominence of the magazine covers it graces, the quantity of congressional hearings it generates, the number of Hollywood B movies it spawns, or the volume of press releases that pour out of newsroom fax machines, the debate over lesbian and gay rights clearly has come of age.

Just as clearly, it was the election of Bill Clinton, the first president to openly embrace homosexual rights, and the consequent debate over lifting the ban on gays in the military, that propelled the movement out of the gay ghettos of New York City and San Francisco to the center of national discussion in Washington and in living rooms, coffee shops, and workplaces across the country. Somewhat unexpectedly, the movement thus finds itself at a watershed. Its sudden prominence has forced gay and lesbian leaders to articulate their aims, even as they grope for a political strategy to achieve them.

The classic civil-rights approach adopted by blacks seems to predominate for now. While many want to distance the movement from the radical left, with rare exceptions the leaders of gay and lesbian groups hew to a left-liberal political plank, demanding a new civil-rights bill that would add homosexuals to the panoply of groups granted legal status as protected classes.

Surprisingly, however, a quite different path is also emerging and appears to be gaining popularity among the gay intellectual and political elite, offering the possibility that this civil rights movement could veer off on an unexpected course. The values of this new politics are far more traditional, even conservative, and yet its demands are also much more radical. It enjoys a distinctly American moral appeal that disarms opponents, even as its radicalism inspires a fierce, instinctive opposition.

Its primary political and legal aim is to end discrimination by the state; those who embrace it fully would leave private discrimination legally unaddressed. Its linchpin is government sanction of same-sex marriage. On the social front, the primary goal of the new politics is to gain social acceptance—not, as the gay left would do, to subvert straight culture and superimpose its own. And its method is not an act of Congress, but the deeply personal acts of thousands of individuals who emerge from the closet and declare their homosexuality.

"It is clear to me," says Tim McFeeley, executive director of the Human Rights Campaign Fund, the largest and perhaps most influential gay and lesbian organization in the country, "that regulation, to the point of preventing any two people from loving each other or entering into a public commitment that declares and publicizes two people's commitment and love for each other, is really central in terms of the government's control over our lives."

Marriage, many gay leaders now insist, is the most obvious and profound form of state discrimination against gays and lesbians. An entire body of law hinges on the marriage contract, they argue, and with it an entire body of rights that constitute the essence of the legal bias against homosexuals—from property rights to hospital-visitation privileges—as well as a deeply felt social validation. They also acknowledge that marriage is their most radical demand, considered by many, McFeeley says, to be "terrible, dangerous, countercultural."

This new politics (its leading theoretician is Andrew Sullivan, editor of *The New Republic*) has grown out of an odd confluence of accident, historical experience, and the unique nature of the homosexual taboo.

In an unplanned turn of events, just as the gay and lesbian movement achieved political momentum, the debate over the military ban suddenly switched public attention from social prejudice against Greenwich Village drag queens and leather dykes to blatant government discrimination, including classic witch hunts, against the most patriotic and socially conservative members of American society.

The movement also is reaching prominence at a time when historical experience is illuminating the pitfalls of the traditional civil-rights focus on oppression and victimization. Across the board, from the radical left to conservatives, gay and lesbian leaders shun affirmative action, saying that it is not a goal and is not under discussion.

*A new wing is emerging in the gay rights movement. Its values are traditional, even conservative, but its demands are radical. It seeks to end discrimination by the state and to gain social acceptance, not to subvert straight culture. Its linchpin is government sanction of same-sex marriage.*

In this connection, movement leaders have been stung by the effectiveness of the conservative charge that gays and lesbians are demanding "special rights." This charge was at the core of the Colorado initiative that bars protections for homosexuals. No two words raise more hackles among movement leaders.

Alan Klein, a co-founder of Queer Nation, calls the phrase a "crafty campaign by the religious right to scare people, a scare tactic that says blacks or Latinos or gays and lesbians are looking for something more than they're entitled to. That is crazy and a misstatement. All that these groups and the gay and lesbian civil rights movement want are the same rights that everyone else has."

The problem, of course, is that the charge rings true. A federal civil-rights law would, by definition, add gays and lesbians to the list of protected classes. "It is in fact true that anti-discrimination laws are special privileges," says a prominent Washington libertarian who is gay but not out publicly. "In every case, if you're talking about the private sector, these are special rights."

Jonathan Rauch, author of *Kindly Inquisitors: The New Attacks on Free Thought*, adds, "What the right has figured out is that if you can frame someone as a special pleader, a special interest in America, that person is rightly in trouble." It is the very potency of the "special rights" charge that has forced a subtle shift in political strategy—at least at the rhetorical level—away from the victim model that other groups have embraced.

Most important, however, is the recognition that while discrimination against lesbians and gays shares many characteristics with discrimination against blacks, there are profound differences as well. Lesbians and gays face a unique brand of prejudice that makes the traditional civil-rights course ill-suited to their cause and in many ways unworkable. Unlike blacks or women, lesbians and gays can disguise themselves—or, in the language of Jim Crow, can "pass"—and thereby avoid discrimination. As a result, the closet remains a huge barrier both to gaining social acceptance and to adopting affirmative action.

This is because discrimination is not targeted at gays and lesbians per se but at gays and lesbians who are openly so. Unknown numbers of lesbians and gays have achieved economic success and reached the apex of their callings. Nor do bias and its potential economic consequences accumulate through generations against homosexuals as a group, as they have for blacks.

So whereas legal protections for other minorities have led irresistibly toward government-imposed quotas, it's not likely that legal protections for gays and lesbians will move in a similar direction. For one thing, numerical targets for gays and lesbians would require that they declare their sexual orientation, like it or not. Moreover, as Rauch argues, the victim model simply does not fit very well. "It's not true at the economic or the cultural level," he says. "Who enjoys more cultural influence in Hollywood today, gay people or fundamentalist Christians?"

At the same time, the closet nourishes and sustains the social taboo. "This is a very important distinction," McFeeley says. "It really comes down to the heart of whether or not we're going to be successful in the strategy of getting civil-rights legislation for gay and lesbian people. And that's because the closet and the invisibility offer something that people see as a solution." It is the essence, he argues, of Georgia Sen. Sam Nunn's proposed "don't ask, don't tell" compromise on the military ban.

Indeed, movement leaders argue that the closet lies at the heart of the gay rights movement, as a matter of public policy and as a matter of its very moral legitimacy. Discrimination against gays and lesbians manifests itself less in a lack of economic opportunity than in the deep sense of shame, fear, and self-loathing that homosexuals so often feel, especially when they are young. It operates in quiet and debilitating ways, says Torie Orborn, executive director of the National Gay and Lesbian Task Force, one of the largest gay-rights groups.

"It's in the teenage suicide rate," Osborn says. "It's in the number of people who are in the closet who are afraid to tell their families or their colleagues that their lover is of the same gender. It functions, in essence, to restrict our lives, our liberty, and our pursuit of happiness in a way that cuts across class and race boundaries. The closet is the most potent example of the feeling of being ashamed or embarrassed or fearful just about who you are."

*Love is "so natural that non-gay people don't even have to think about it," says one activist. "Open any magazine, you see it in the ads, men and women being together, being happy, being loving, being thoughtful, being romantic....But if you grow up gay, you have a sense that you're not allowed to do that."*

Greater social tolerance and freedom are goals that every gay and lesbian seems to share. Betty Willis, a Washington lobbyist who is coming out publicly by allowing her name to be used, echoes many when she says her wish is "simply to live a normal life like everyone else, and to not have to hide, to not have to live underground, to not be afraid."

For this reason, says McFeeley, the closet is not a viable option. "It's so simple," he says. "We keep tiptoeing around this, not just the politicians but everybody, including gay people in their relations with their parents. They never confront the real issue, which is, 'Why do you have to be out?' "

The answer, he says, is: "I am a human being and the essence of being human is loving someone else. Denying that or disguising that or hiding that love is very, very injurious to human beings. It is in fact a self-rejection of who you are." Love, celebrated in literature, in art, in commerce, and in daily life, "is something that is so natural that non-gay people don't even have to think about it. Open any magazine, you see it in the ads, men and women being together, being happy, being loving, being thoughtful, being romantic, having fun, sharing life, having kids—all those images, they're constant. But if you grow up gay, you have a sense that you're not allowed to do that. And this is what the closet is all about."

The rhetoric of politics does not admit such talk, McFeeley concedes. "This is the talk of therapy," he says. "This is not the kind of talk you usually engage in in public-policy debates about taxes or aid to Bosnia. But the public-policy issues [such as] should gays be in the military—you can't resolve that issue without talking about these touchy-feely subjects about people loving. We don't have any systematic language to use in discussing love as a factor in public-policy debates. We're uncomfortable talking about these things not only with strangers. We have problems talking about these things with our families."

The peculiar nature of discrimination against gays and lesbians also contributes to what many feel is a confusion between the political objective of changing social attitudes and the personal objective of self-acceptance. Those who want to build social tolerance insist that radical sexual politics is self-defeating. They argue that the celebratory demonstrations of drag queens and "dykes on bikes" at gay-pride parades may be therapeutic for the participants, but smack of self-indulgence and what Rick Sincere, co-founder of Gays and Lesbians for Individual Liberty, calls "a sociology of the left that rejects hierarchy, that rejects prioritizing, that rejects value-based decision making."

April's March on Washington revealed a division between the radical gay left, which views sexual defiance and rejection of social norms as a political end, and the moderate view that the aim is not to overturn mainstream culture but to join it. Gay leaders like to smooth over differences between the ascendant mainstream organizations such as the Human Rights Campaign Fund and such activist groups as Queer Nation and ACT-UP—what some call the Suits vs. the Queers divide. Although organizers of the March on Washington emphasized a mainstream image, a raft of speakers made crude jokes about religious groups and public figures. One comedienne said she was pleased that "we finally have a First Lady we can fuck."

While its role may be receding, the gay left still strongly influences the movement's overall agenda, especially its powerful tendency toward political correctness. Its radicalism and politics of rejection also have clear parallels in other civil rights movements: the Black Panthers, the feminist bra burners, and the century-old debates over whether to seek integration or separation.

Denny Lee, a member of ACT-UP New York, believes that acceptance alone is unacceptable. "It's not merely tolerance that we're looking for," Lee says. "It's something much more profound than that, and something much more important too." Social institutions, he says, "need to be redefined to encompass wider groups. And I think that's what the gay rights movement is doing, namely, we're trying to change the culture."

Osborn of the National Gay and Lesbian Task Force carefully

allows "room for a variety of tactics." But she is "not sure what the goal is" of the "in-your-face cultural guerrilla theater. It seems to be a kind of self-expression more than anything else."

Rauch argues that rejection of social norms is "a statement about radicalism, not a statement about homosexuality." The movement, he contends, will have to address these fundamental differences in aim and strategy. "Just below the surface there's a tension between bourgeois homosexuals like me, who buy into the standard notion of American life and want to be a part of it," he says, "and the radical homosexuals who see their sexuality as implicitly rejecting bourgeois American values. It's not yet clear whether this is a movement about social liberation and egalitarianism or whether this is merely a movement about integrating homosexuals into the standard model of American life."

Rauch sees a risk that the radical agenda "isolates us. And we can't win that fight." The religious right is "not wrong about everything," he contends. "The values of stability and family, hard work and education and thrift and honesty, are bedrock values for society" and should be embraced by the gay and lesbian movement. This is why, he argues, gay and lesbian marriage is such a fundamental aim. "In the long term, I think in America hate and superstition lose when they're directly, openly confronted," he contends. "That one we win. But if we come off as anti-family, we will lose....It's unwinnable. And it shouldn't be won."

*The lesbians and gays most likely to be seen demonstrating on TV are those most alienated from the mainstream. Those most able to counter that image are most likely to be closeted and invisible. As one activist argues, "I can't think of anyone who has more of an obligation [to come out] than a gay Republican."*

The more radical groups, however, charge that mainstream gays are engaging in their own form of intolerance and hypocrisy by ostracizing drag queens and other fringe elements. "The fear is that we become hypocritical as a movement if we exclude our own members," Lee says.

Rick Sincere of Gays and Lesbians for Individual Liberty concedes the point but counters that the left too often views the gay movement as part of a larger aim to "overturn Western civilization" and insists "that they want to have sex when they want it and how they want it, no matter who it offends." Similarly, Rauch says that tolerance does not mean "that you abolish criticism and disagreement about what is good taste and what isn't."

The far right, Sincere argues, exploits the radical image with videos that show only "the drag queens and the leather queens and the people simulating fellatio in the street. The average American in rural Kentucky who has never met a gay person before is going to think this is what gay people do all the time." It's as though, he says, "you took somebody from another planet and set them down in New Orleans in the middle of February and showed them Mardi Gras and said this is what heterosexual Americans do 365 days a year. They have no context in which to judge that, and they're going to believe it."

Again, many argue, the closet is the problem, and opening it is the key to combating what Pat Buchanan calls the "visceral recoil" straights feel toward lesbians and gays. When the black civil rights movement began, notes the Washington libertarian, "all blacks were visible, and they all in some way represented their race. And they may have resented that. They may have said, 'Listen, I didn't ask to be an ambassador of the black race. I want to live my life and not worry about what other people think.' But like it or not, you could see them all, and in some sense you judged the black community by all the blacks you knew as well as the ones you saw on television."

The lesbians and gays most likely to be seen demonstrating on television are those who are most alienated from the mainstream, he argues, while those most able to counter that image are also most likely to be closeted and invisible. Hilary Rosen, a recording industry lobbyist, board member of the Human Rights Campaign Fund, and a liberal Democrat, maintains that those gays and lesbians who are most offended by the images put out by the radical left are precisely those who must come out. "If I have an obligation as a Democrat to be active and out and vocal," she says, "I can't think of anybody who has more of an obligation than a gay Republican."

The Washington libertarian, aware of his self-contradiction, argues that the more people who come out, "the more people there are who are going to know a gay person and like or love that person and realize that these people are not some figment of Pat Buchanan's fevered imagination, but their next-door neighbor, their son, their boss, their secretary. And that changes the way people think."

He recalls attending a gathering of some 200 gay and lesbian Republicans in suburban Washington, "all well dressed, well coiffed." Their biggest concern was that every time gay people were on television, "they were prancing in the Castro Street parade wearing jock straps," he says. But at the end of the cocktail hour, when asked for volunteers for a new gay organization's board of directors, nobody, including him, raised a hand. ◻

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With friends like Bill Clinton, gays don't need enemies. *By Richard D. Mohr*

# Military Disservice

Gays should have started to worry when Bill Clinton, even before the inauguration, reneged on a campaign promise that he had made as a matter of principle. Clinton announced that he would maintain the Bush administration's ban preventing Haitian boat people from making claims that they were political refugees, thus denying them a legislated right afforded all other migrant populations. While campaigning, he had called the ban "cruel and illegal." The motivation for the special ban also seemed patently racist. But once Clinton was elected, this cruelty and illegality turned out to be a cruelty and illegality he could live with and even defend before the Supreme Court.

Within the first week of office, Clinton showed that such shaky morality would permeate his civil-rights policy. Both during the campaign and immediately following his election, he promised to lift by executive order the ban on gays in the military. More generally, during the campaign he said to gays, "I have a vision of America—and you're part of it." Here, as in his early statements on the Haitians, he outlined a moral position: Government may not place people in a degraded status because of what they are, as opposed to what they do, and it may not pursue its legitimate ends through means that violate this principle. But he started a moral retreat from such a principled stand as soon as resistance emerged from Congress, the military, and the people.

Clinton's first moral step backward—and strategic blunder to boot—was to suppose that this was an issue that could be properly addressed by consensus. To try to build a consensus, he turned first to the Joint Chiefs of Staff for advice. But he did so in a way that positioned them as free agents operating independently of the executive branch, rather than as subordinates in a military chain of command. Clinton conceded as much in his January 29 "compromise" speech, when he said the Joint Chiefs had "agreed" to the compromise, implying they had veto power over him.

And what is the value of consensus here anyway? Consensus-based decision making may be the best method for addressing matters of policy, but it is incompatible with matters of principle and of rights, for two reasons. First, to do something as a matter of principle—because it is right rather than popular—requires going against consensus. Second, rights are at heart minority claims against majorities, and so matters of rights can never legitimately be left to the tender mercies of majoritarian rule, let alone consensus. So Clinton was both conceptually confused and morally misguided when he tried to apply his business-as-usual political approach to a gay issue. In doing so, instead of advancing the dignity of gay people, he humiliated them.

Bad strategy aside, Clinton's own justification for lifting the ban also virtually guaranteed that he would fumble on the issue.

His justification has always been made in terms of human resources, never in terms of human rights. Harking back to broader, generally communitarian campaign themes, Clinton claimed that "we don't have anyone to waste": We—society as a whole—will simply be wasting human resources if we don't allow gays into the hiring pool for the armed forces. As late as the eve of the April 25 gay March on Washington, he was giving as his justification for wanting to lift the ban: "I believe we need the services of all of our people."

Now, some of us Americans believe that the purpose of government is that articulated in the Declaration of Independence: "That to secure these rights, governments are instituted among men." We believe that government exists for the sake of the individual, rather than that the individual is to be viewed as a resource for society. Indeed, we thought the position holding that the individual exists for society was the political ideal which defined the corporate state or fascism.

*Clinton's justification for lifting the ban is made in terms of human resources, not human rights. "We don't have anyone to waste," he claims. But, some of us believe that government exists for the sake of the individual, rather than that individuals are to be viewed as a resource for society.*

But whatever the theoretical merits of this communitarian-fascist posture—and it should be remembered that communitarians have never incorporated any gay perspectives into their world visions—the posture had three disastrous consequences for Clinton's handling of gays in the military.

First, the human-resource argument, feeble to begin with, thins to the breaking point when faced with the Cold War's end and the continued down-sizing of the armed forces. If Clinton is worrying, as he says he must, about what to do with military personnel who will be laid off because of reductions in the armed forces, then worries over the size of the military's hiring pool will have a hollow, contrived ring to them.

Sometimes the cost-benefit argument is recast as a claim about the price of administering the ban: The administrative expense of witch hunts and discharges is what makes them objectionable. At his February 11 national "town meeting," Clinton made exactly this argument: "Let me tell you why I favor lifting [the ban], very briefly.... Your government spent $500 million to get rid of about 16,300 homosexuals from the service in the 1980s." This implies that if a witch hunt cost only two bucks or if a 20-cent saliva test could be devised to detect homosexual desire, chucking gays out of the military would be perfectly all right. So much for gay worth. So much for gay dignity.

Second, human-resource issues and matters of economic policy generally are more properly the preserve of Congress, as the law-passing body of government, than of the executive branch, whose function is to carry out laws. On human-resource issues, the president proposes, but Congress disposes. Clinton's human-resource argument thus played right into the hands of Sen. Sam Nunn (D-Ga.) and the Republicans, who claim that the issue properly belongs to Congress.

Third, by failing to cast his argument in terms of rights, Clinton also left himself open to a hecklers' veto. He legitimated a claim by soldiers, their commanders, and their supporters that the disruptiveness of straight soldiers made uncomfortable by the mere presence of gay soldiers justifies the ban. In determining what sort of government concerns can legitimately override a right, it is a settled moral principle as well as legal doctrine that bigotry against and fear and hatred of a group are to be given no weight at all in determining whether discrimination against that group is rational. In the military debate, Clinton has never once said that the rationales that the armed forces offer for the ban, based as they are on bigotry and fear, are illegitimate for the same reason they were illegitimate when used to try to justify segregating black soldiers.

This includes the chestnut that close military quarters mean that gays will invade the legitimate privacy of straight soldiers. The Army claimed the same of blacks: The real horror was that white soldiers would have to live in the same privacy-bereft quarters as blacks, who were viewed as dirty, polluting, dangerous, and identity-destroying. Or as Sam Nunn's predecessor in the Senate from Georgia, Richard Russell, put it in 1948: Soldiers "eat and sleep together. They use the same sanitary facilities day after day. They are compelled to stay together in the closest association."

If we have here a human-resource issue about social inefficiency, it is properly resolved by congressional study and decision. But if, as seems to be the case, we have here an issue of human rights, it is to be settled by appeal to morality and resolved in a principled manner. Consequently, an executive order that not only lifts the ban but also articulates a general principle of nondiscrimination in the armed forces is appropriate.

Clinton should have taken a moral and political tip from Jimmy Carter. Carter acted with decisiveness and principle his very first day as president, when he granted amnesty to those Americans who avoided the Vietnam War. The armed forces, veterans' groups, and their conservative fellow travelers were outraged at Carter's bow to draft dodgers, whom they considered traitors to the nation, better fit for a noose than a pardon. But Carter's swift move prevented this widespread ill will from

turning into hysteria and action. By contrast, Clinton and Defense Secretary Les Aspin's indecisiveness, together with an early willingness to compromise principle, practically invited the ensuing hysteria from veterans, Christian fundamentalists, and conservative talk-radio listeners. Populism is morally indistinguishable from prejudice.

And so Clinton handed gays a humiliating defeat. The ban on openly gay people in the military continues, and the regulation of gays becomes ever more ramified, articulated, and entrenched. Under Clinton's "compromise," gays cannot be asked if they are gay on admission to the armed forces. But they can be prosecuted if they say they are gay once they are in—prosecuted up to the point of actual discharge, at which point they are sent to something that is a cross between Limbo and Siberia—Inactive Standby Reserve—with no pay, no benefits, and all the dishonor of apartheid.

The day before Clinton publicly announced his capitulation to Nunn and the Chiefs of Staff, a federal district judge in California declared the ban on gays in the military an unconstitutional violation of equal protection. Quoting official documents, the judge found that the government and military's own factual findings contradict the justifications offered for the policy of exclusion. But in Clinton's compromise speech, he made no mention of this moral and legal backing for ending the ban. How could he? For the apartheid of gay soldiers instituted in his compromise would, under the judge's decision, be as unconstitutional as the ban itself. Once one begins to sell out principle, one cannot easily return to a principled stance, or even use the principled actions that are handed one by others. Indeed, Clinton's Justice Department is now appealing the judge's decision. Courageous actions breed courageous actions; moral weakness breeds moral weakness.

At his compromise press conference, Clinton announced that some sort of executive order would be issued in mid-July. In the meantime, the armed forces, Congress, and unnamed "others" were to be consulted. To Clinton, gay voices were not even worthy of mention among those who might have something to say about the policy. Indeed, Clinton started running from gays as fast as he could, saying that we Americans need to press ahead on the important issues of the times—as though banning certain classes of people from serving their country in the armed forces were a fringe issue. In fact, as the racial and gender history of the military shows, the ability to serve in the armed forces has been a defining characteristic of full citizenship—and, indeed, full personhood. In overlooking this point, Clinton cast gays as a dismissible, selfish "special interest" group—just as conservatives view them.

Although Clinton kicked the gay ban squarely into the political realm, he said he would do no politicking on the issue in the six-month period before issuing the mysterious executive order. So it's likely that the political ground will be as poorly prepared for the order as it was for Clinton's promise to end the ban.

Clinton did not even take the opportunity provided by the interim period to mandate military training aimed at reducing homophobia in the armed forces. The military takes pride in its ability to use in-service instruction and discipline to reduce racism in the armed forces; in the wake of the Tailhook scandal, it has aggressively moved to confront sexism by the same means. Rather than deploying the military's unique educational capacities to smooth the transition to an integrated force, Clinton simply suggested that gays should be grateful that they have a president who is in the lead of the civil-rights movement. But since he has done nothing positive for gays, indeed has contributed to our humiliation, this all-talk, no-action ploy is a rather transparent attempt to seize moral credit on the cheap.

*When he announced that he would not attend the march, Clinton advised gay leaders to avoid abstractions and stick to personal stories. One could hear between the lines of sweet talk the further bit of advice that gays should avoid appealing to principles, because frankly Clinton himself doesn't have any.*

To add to his humiliation of gays, Clinton hightailed it out of town when hundreds of thousands of gays converged on Washington on April 25 for a rally aimed in large measure at ending the ban on gays in the military. Two weeks after his election, Clinton had sent a letter to a conference of the National Gay and Lesbian Task Force, saying that the gay vote had been necessary to his election. But now Clinton was clearly sending the message to the nation that gays are just too embarrassing to be seen with in public.

To try to placate gays in advance of the March on Washington and to announce firmly that he would not speak to the march, Clinton had a few leaders of gay organizations to the White House the week before. He gave them the political advice that they should avoid abstractions and instead cast their cause in terms of stories and personal experience. One could hear between the lines of this sweet talk the further bit of advice that gays should avoid appealing to principles, because frankly Clinton himself doesn't have any.

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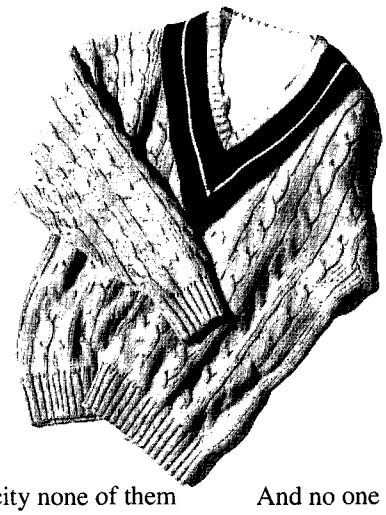
A gay man's defense of real family values

*By David Link*

# I Am Not Queer



There were 14 of us at the family dinner table, representing four generations. We were at my sister's house just outside of Victorville, part of a growing community in Southern California's high desert, about two hours east of Los Angeles. It was a little above 30 degrees outside, and the sky was a clear window on a million stars.

My sister and parents, as well as a number of my uncles and aunts, had moved here partly because of the affordable housing, partly because they are golfers and their neighborhood is built around a lovely golf course, and partly because it is the kind of quiet community that is the antithesis of the city none of them ever liked. They are endlessly satisfied with the distance they have put between themselves and Los Angeles. In most of these details, I am very different from my family.

Still, I come up to visit them often. They are my family, and I enjoy spending time with them. But they are also something else to me: They are my ground. A large part of the country is made up of people like them, people who do not often get involved in the political rhetoric I am used to—the rhetoric of the media, of academic debates, of the centers of power. People like my family, suburban, church-going people, are consumed with the day-to-day details of their lives and have little time for things like the big picture, the effect society has on individuals, the law. I have always been drawn to big-picture issues.

But in the small things, the family rituals, I share a great deal with them. My family is located squarely at the heart of the middle class, and so am I. In that way among others, I am much like them. And here among these people I loved, having one more in a lifetime of family dinners, I noticed something that struck a chord in me, not because it was unusual, but because it was so very usual that it went without any comment at all. As I looked around the table, I realized that of the 14 people busily loading their plates and talking, five of us were gay.

And no one cared.

The cast of characters was for the most part as familiar to me as the photographs on the walls of my apartment. My grandmother and parents were there, as were my sister and brother-in-law. Two of my seven uncles were with us: One sat next to his wife, while the other was there with his longtime male lover. My sister's stepson Rick had brought his girlfriend. Early in the evening Rick's brother had called to let us know he would be there too. When he arrived, he introduced us to the young man he had brought along as his date. Since in my family there is always enough food, my sister set another place at the table for the additional guest with little fuss. The fact that he and his date were the same sex was no big deal.

Just before dessert, my Aunt Ann and Uncle Fred dropped

by. Even among my family—who, with rare exceptions, are conservative Republicans—these two have always been especially conservative. I have long been uneasy with both major parties, but I am a registered Democrat, and I sometimes espouse Democratic Party positions I don't wholly support so that Fred and I will have something to argue about. The never-ending political debates between Fred and me are a family tradition as predictable as turkey on Thanksgiving, and Ann is always there to chide me with some argument Fred might have forgotten. Our debates are usually loud and intense; whatever the details, we both care deeply about politics. Because of our political passions I have long felt a special kinship with Fred and Ann, and they have always felt close to me. Most of the rest of the family discusses politics only reluctantly.

In making her greetings to everyone, Ann, as usual, saved a special zeal for my uncle's lover. He is one of those people who came into the family's enthusiastic embrace easily. While my family generally accepts all comers, in the natural course of things some are more loved than others. My uncle's lover was a favorite from the start.

*My family is like hundreds of thousands of families too often absent from the discussion about gay rights. They are people of good faith who found a way to respect and accept their lesbian and gay relatives. In some ways, that kind of lived support is more important than all the manifestos and blood-boiling demonstrations.*

This domestic picture will be an affront to some people who are homosexual. I have long been aware that the family I come from is not like the families many lesbians and gay men were brought up in and had to escape, the families that the notorious Mad Pats at the Republican Convention thought they could use as a weapon against lesbians and gay men. While that strategy backfired badly, it remains true that because of the disquiet the Mad Pats exploit, many gay people are unable to have the kind of relationship with their families that I have.

That said, I bring my family up for a very specific reason. They are not alone. They and hundreds of thousands of families like them are too often absent in the discussion about gay rights—not as weapons against gay people, but as their imperfect allies. The public discussion of homosexuality tends to take place at the extremes; since the loudest objections come from radical conservatives, the opposition tends to be equally intense, equally extreme. While this makes for symmetry, the fervor on both sides sometimes excludes people like my family who have a more moderate interest in the issue. Those people, who are neither particularly articulate nor especially inflamed, feel as if they have no place in the ring.

I think these families and family members should be acknowledged. They are people of good faith who, while they are not champions of gay rights, have found a way to respect and accept their lesbian and gay relatives as well as they can. In some ways, that kind of unexpressed but lived support is more important than all the manifestos and blood-boiling demonstrations.

Those families and those children can have the relationships they have because the way was paved by giants, lesbians and gay men who took what for the time was a radical position in a wholly uncomprehending world: that they should be accepted in their entirety, regardless of their sexual orientation. The almost unbelievable bravery of Harry Hay and the other men and women who can be counted as founders of the gay rights movement helped to change the way we think about people who are homosexual.

New giants are in the making, younger ones: Roberta Achtenberg, the first open lesbian to serve in high government office; Michealangelo Signorile, the champion of "outing"; Rich Jennings of Hollywood Supports, continuing the work he began in the Gay and Lesbian Alliance Against Defamation; and hundreds of others. They have stepped into the world their predecessors helped create, ready to carry on that work.

But there are different styles of activism. A number of high-profile lesbians and gay men now proudly call themselves Queer. This is particularly true in the gay press. Many have joined Signorile and given life to radical groups like Queer Nation; some seem to be most satisfied when they can make others most uncomfortable.

I am one of those who feels uncomfortable.

There is no shortage of lesbians and gay men who adopt this in-your-face attitude toward the world at large. But what is it supposed to accomplish?

In part, identifying as Queer is a way of disarming the epithet. When minorities embrace the words used against them, they mitigate, to some extent, the use of the words as weapons. But that strategy has never been fully successful. African-Americans once tried to defuse the word *nigger* in a similar way. But despite their best intentions, the word never lost its force as an epithet, as any member of the Ku Klux Klan can attest. *Nigger* still pierces, still causes harm.

A second reason for lesbians and gay men to identify themselves as Queer is to exercise some control over their position in the world. Rather than having a name imposed, the group chooses its own. Even if the group chooses a name that already exists, it is still a form of empowerment, or at least it feels that way. Whatever its value, though, this tactic has the potential to try the public's patience. Minority groups are not like nations or states; they do not have a unified government that can decide once and for all

what the country and its people will be called. As group members debate, the jury is still out in editorial rooms across the country about whether to use *African-American* or *black*.

It is in this context that I have wrestled with myself over whether, as a gay man, I am Queer. I have decided that I am not. *Queer* is the word of the Other, of the Outsider. I do not feel like I am outside anything due to my sexual orientation.

The generations of lesbians and gay men who lived in the time leading up to the Stonewall riots in 1969 were radicals by definition. They said out loud what at the time was unsayable—that sexual orientation should not matter. While sexual orientation is obviously a difference among people, people are different in a multitude of ways. Hair color is a more obvious difference than sexual orientation, since it is immediately visible. But we did not create a systematic hierarchy of preferred over less-preferred and non-preferred hair color, granting blonds and brunettes rights that are unavailable to redheads, requiring people who choose to marry to find a mate whose hair color is different from theirs, or the same. Hair color is one of thousands of differences that can be noticed but carries no legal or normative weight.

Since the pioneering sex studies in Germany early in this century, those arguing for equality for lesbians and gay men have asserted that sexual orientation is not a sickness or a pathology, that it is another neutral difference that should be treated neutrally. For most of the century, mainstream society disagreed, saying that sexual orientation was a difference that mattered and would be treated by the law as if it mattered.

Since Stonewall, though, the law has made considerable strides toward neutrality. The ultimate goal was equality, the elimination of the laws that treated homosexuality and heterosexuality differently. Bit by bit that equality is being recognized. As Barney Frank has observed, recent movements like that in Colorado explicitly to deny equality to lesbians and gay men have arisen in part because of growing tolerance. Colorado for Family Values, which backed the Colorado initiative, wants to return to the inequality its members are comfortable with because it feels that inequality slipping away. If the gay-rights movement had not had its successes, CFV would not be necessary.

Like members of CFV, those who want to identify themselves as Queer are capitalizing on the significance of the difference between heterosexuals and homosexuals. Some have been outspoken in their focus on this difference.

But to say that lesbians and gay men are different from heterosexuals is no more than a tautology. The game of definitional difference can be played on a number of axes. In addition to being gay, I am also male, of Italian background, and Catholic; I practice law and write for a living, am reasonably well-educated, and 39 years old. To some extent, each of these is as important to my identity as my sexual orientation. Therefore, I could identify myself at any given moment as a gay man, a male, an Italian (or, more broadly, a Caucasian), a Catholic, a baby-boomer, a lawyer, or a writer, and I would be telling the truth.

By choosing one group, however, I would also be leaving out a great deal. I am no more male than I am Italian or Catholic or lawyer or writer or homosexual. All fit together in some way that adds up to me. Therefore, while I do claim membership in all of those groups, and while some are more important to me than others, it would be too easy to lose sight of the whole if I were to grant one group special status as the Group I identify with. Each is an adjective about me; none is me.

*Those who call themselves Queer emphasize the difference between heterosexuals and homosexuals, but the game of differences can be played many ways. I could identify myself as a gay man, a male, an Italian, a Catholic, a baby-boomer, a lawyer, or a writer. Yet while each is an adjective about me, none is me.*

Each of us belongs to a lot of groups, many of which overlap. Any individual could draw a Venn diagram of the dozens or hundreds of groups he or she belongs in, and the intersection of all those circles would be a group of one. The poet Maya Angelou has made this point explicitly: "In my work, in everything I do, I mean to say that we human beings are more alike than we are unalike, and to use that statement to break down the walls we set between ourselves because we are different. I suggest that we should herald the differences, because the differences make us interesting, and also enrich and make us stronger. [But] the differences are minuscule compared to the similarities. That's what I mean to say."

Experiences of love and loss, trust, betrayal, jealousy, injustice, joy and pain, comfort, rage—all these are points at which we can touch one another as people because they are experiences every one of us shares. One of the jobs of the artist has been to explore those touching points, to bring us together from our varied and diverse particulars into a single place where we can recognize something we have in common.

Hamlet, for example, is a Dane, a heterosexual, and a male, but he is also the embodiment of something that transcends all human categories, the human problem of indecision. The particulars of his story are interesting and relevant, but in his very particular story we can also find something universal. Generations of individuals who have encountered this ambivalent hero have seen something of themselves on the stage. Anyone who

has ever had to choose a restaurant or a video knows on a trivial level how hard it is to decide to act. And everyone knows how difficult the larger decisions are—what profession or job to enter, where to live, whom to trust or to love. Hamlet's truth about the difficulty of decision defies gender and race and sexual orientation and everything else.

Balancing our similarities and differences is the juggling act of identity. The current focus on the ways lesbians and gay men differ from heterosexuals simply reinforces the walls between us and leaves no gate. In this, lesbians and gay men dishonor the success of those whose work has so much changed the world.

A generation ago, I could not have had the dinner with my family that I did. What my family and I have in common would have been destroyed by a single difference. To maintain a relationship with them, the burden would have been on me to lie. In my family, those days are gone. The five gay men who were at that family table could be honest, and we were not penalized for our honesty. And the family as a whole benefited by remaining intact, by keeping all of the bonds between us alive. We could find some reassurance in our similarities while taking advantage of the differing viewpoints each brings to the family's dynamic.

That is only one measure of what the very loose phrase "gay rights" means. It is my understanding that the goal of the gay rights movement all along was to allow lesbians and gay men to live their lives irrespective of their sexual orientation, not superrespective of it. This was difficult to do when heterosexuals focused—sometimes obsessively—on homosexuality. Lesbians and gay men know their sexual orientation is a part of their makeup, but it isn't any more important to them than a heterosexual's sexual orientation is to him or her. Sex is certainly a part of an ordinary life, but most people—lesbians and gay men included—spend more time watching TV than doing the nasty.

By identifying as Queer, lesbians and gay men do exactly the same thing that the most virulent homophobes do: They make their sexual orientation hyper-important, more important than any single factor should be in a complex human personality. Equally important, by marking ourselves as outsiders, we deny what we have in common with others.

Lesbians and gay men in the past were radicals because they had no other choice. That is no longer true. Because of decades of radical work, millions of people are able to view homosexuality now within the context of ordinary human variations and, like my family, pay it no mind. This goal has clearly not been achieved everywhere, but we are far enough along the road that openly homosexual people can choose to avoid a radical identity.

Some lesbians and gay men may decide to follow the path of the sexual outlaws, determined to be the Outsider. This pose has long been a kick for the young, straight or gay. But in adopting that pose in today's world, lesbians and gay men are making a free choice. In that they will be less like the gay sexual outlaw John Rechy proclaimed himself to be and more like Madonna. Whatever else can be said about Madonna, she has made her own choices and not let anyone else dictate what part her sexuality plays within her identity. As a gay man in the '60s, Rechy did not have that choice.

*The superficial advantage of group identification is that it offers a prefabricated self. Choosing an identity off the rack saves time and emotional exploration, yet an off-the-rack identity wasn't designed for the individual. So some homosexuals are criticized for not being "gay enough," for not wearing their identity properly.*

Making an identity has always been difficult. The superficial advantage of group identification is that it offers a prefabricated self. Choosing an identity off the rack saves a great deal of time and hard emotional exploration. The downside, of course, is that an off-the-rack identity was designed for the mass market; it does not have the individual in mind. Thus, some people who are homosexual find that they are criticized for not being "gay enough," for departing from the party line in certain instances, for not wearing their gay identity properly. But that is because, unlike the tailor-made identity, one bought in the current department store of identities will only come close to the actual proportions of its wearer. The small gaps and sags may be tolerable, but the purchaser must know he or she is buying something manufactured for millions. And like all uniforms, it comes with expectations.

For the most part, homosexuality is no longer outside the law. While there are certainly laws that still need to be changed—some dramatically—the strategy for change may need to be rethought. Confrontations were required in the early days because a majority of people were simply dead to the problems faced by lesbians and gay men. Confrontations are less necessary now and in some cases are probably harmful.

That is because confrontation is a strategy for those who are not being heard. Lesbians and gay men do not want to argue with the heterosexual majority because we like arguing; the point is to persuade a majority that the law is unfair when it treats homosexuals differently from heterosexuals and to get those who disagree to change their minds. That is how the First

Amendment is supposed to work. Confrontation is a last resort. It is dramatic, extreme, a battering ram to knock down a door that will not open. It is the antithesis of persuasion.

But in most cases, the doors of discussion are open. After all of the work that has been done, particularly in the last two or three decades, most people are aware that lesbians and gay men have a grievance and most people will listen, even though many will not agree. This progress can be seen in the way the recent March on Washington was covered by the media. A similar march in 1987—which drew, even by the conservative estimate of the National Park Service, about 300,000 people—was given cursory coverage in most media outlets and was initially ignored by some, including both *Time* and *Newsweek*. Six years later, the same kind of event, with God knows how many participants, was judged worthy of banner headlines, cover stories, ample air time, and considerable pre- and post-march attention. The task is no longer getting people to acknowledge that lesbians and gay men exist; the task is to change the minds that can be changed.

Radicals, however, continue to believe they are not being heard at all. They treat the world as if it were populated only by their polar opposites. This is as true of the religious radicals as it is of the gay radicals. Both sides hurl images out of their own personal horror movies into the debate. The campaigns in Colorado and Oregon were not so much about homosexuality and religion as they were about sado-masochism and the Spanish Inquisition. Grotesque images of chained and (barely) leather-garbed San Francisco parade participants were pitted against the sour faces of paranoid preachers and the bruised bodies of gay bashers' victims. No matter which side you talked to, the end of the world was imminent.

Supporters of the ban on open lesbians and gay men in the military use a similar strategy. The military's argument is a simple one: Removing the ban will destroy our armed forces. The prejudice against lesbians and gay men is so powerful, it is argued, that heterosexual service members will ignore their too-fragile military discipline, violence and chaos will be unstoppable, and the country will be left defenseless.

Most people are aware that such apocalyptic thinking is self-dramatization in a world that adores indulgence. There is no winning with the extremists. It should be clear by now that the Mad Pats of the world will never accept open homosexuality. But they do not need to. No political issue is ever settled finally. There are no public questions whose resolution will command 100 percent of the population. Politics takes place in the middle of the bell curve.

The people who can be persuaded are going to be like my family. Grand theories about justice and social change will not do the trick with them, and visions of the apocalypse leave them cold. They do not much care for theories. They respond to what is in front of them, to what they can see and feel. They are not interested in how lesbians and gay men are different from them—that much is obvious. They want to know about the common ground. Lives become connected not through difference but through similarity. Connected lives become interesting because of difference, but they do not initially connect at that level. Remember the first stages of love, where so much time is devoted to revelations such as, "Oh, you like Rocky and Bullwinkle too."

There are many more people yet to make those connections with. The task is finding where the connections can be made. Sexual orientation is no longer so all-important that it overrides everything else about a person. My family used to think that. They do not anymore. My gay uncle and his lover are just like the rest of my family, sexual orientation aside. The news is that sexual orientation can be set aside. Being gay makes my uncle and his lover interesting, but other things make them interesting too.

Some lesbians and gay men, especially the artists, may balk at the implication that in certain ways they are quite ordinary. To a generation brought up to worship individuality, this is anathema. But there are many things that make each of us unique. Sometimes it is very nice to share small and common things, to just watch TV with someone or talk about sports, or help a sister making cookies in the kitchen. It is on those ordinary battlefields that what is left of this war can be won.

It is a great burden to make your life always and everywhere extraordinary. Homosexuality used to be that kind of a burden. But homosexuality no longer makes anyone extraordinary by default. Perhaps the new radicals regret the loss of that sort of specialness and are trying to reconstruct it. But what lesbians and gay men have lost in forced distinctiveness, they have gained in options. They do not have to approach politics only from the outside; there are gay lobbyists and elected officials as well as street protesters.

The battle for gay rights has not left the streets and the books, but it is now being waged inside millions of private homes too. The assumption that heterosexuals are irretrievably opposed to gay rights is unfair, one more stereotype that hinders this debate. Heterosexuals of good faith have every right to find such an assumption as offensive as lesbians and gay men have ever found any stereotype about them, and for the same reasons.

I am not a Queer because I do not have to be one. I am not that different from most people in this country. As a gay man who is other things besides, I stand the best chance of finding a connection with someone, of starting a conversation, of changing a mind. That exposure is one of the fundamental principles of coming out: Reality undermines the fears that invisibility permits and opens the possibility of dialogue. It is in those plain and often tentative encounters that I and millions of others can make our contributions.

It is unfair that the burden is still on lesbians and gay men. Events like the March on Washington are still necessary; persuasion is a reality we cannot wish away. But this residue of injustice cannot be compared to the injustice those who came before us faced. The world is listening now because of what those pioneers did, and to assume anything less is to deny the achievements of my heroes, those men and women whose work in a hostile world gave me the gift of a family I love. Those men and women were radical so I would not have to be. ◼

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# MADE IN AMERICA?

BY BRIAN DOHERTY

Zenith Electronics Corp. claims to be the only American-owned company that manufactures color TVs in the United States. In 1985 it began assembling TVs in Mexico. During the next eight years, it moved almost all of its TV-assembly operations there. But it continued to maintain a minor assembly plant in Springfield, Missouri. A worker recently laid off by the plant says managers told employees there that "Zenith will always maintain one assembly line at the plant so Zenith can claim to be an 'American manufacturer of color TVs.' "

This is not simply a matter of advertising slogans or patriotic fervor. Because of U.S. anti-dumping laws, there are definite advantages to keeping that assembly line going. Under anti-dumping laws, a U.S. manufacturer can ask the Commerce Department to fine its foreign competitors for selling goods to Americans at a price that's too low.

The idea is to stop foreigners from establishing an unbreakable monopoly by driving American producers out of the market through predatory underselling. Since there is no historical or theoretical reason to think this is likely to happen, the main effect of the laws is to make a range of products, from forklifts to pistachio nuts, more expensive. This is bad for consumers but good for companies like Zenith. The catch is, you can't file an anti-dumping complaint unless you're an American producer.

Zenith has been bringing anti-dumping complaints against its foreign competitors for decades. Japanese TV manufacturers have been coping with anti-dumping orders since 1971. Zenith's Korean and Taiwanese competitors have been operating under them since 1984.

After the Commerce Department receives a complaint, it has to decide whether dumping has occurred. This involves looking at prices in the company's home market or calculating a "constructed value" for the foreign-manufactured item—essentially, a price high enough to be considered "fair." Commerce estimates the foreign company's cost of production, adds 10 percent for administrative overhead, and throws in another 8 percent, the department's notion of a "fair" profit. If the selling price in the United States falls below the constructed value, the company has to pay extra import duties. Commerce adjusts the amount in an annual administrative review.

**Zenith has moved all its TV-assembly plants to Mexico, except for one in Texas—allowing the company to keep its status as a domestic producer and its ability to file anti-dumping complaints.**

These reviews and the court appeals they generate can drag on for years or even decades. Because of undecided court appeals, none of the Taiwanese TV companies—AOC International, Tatung Company, Sampo Corp., Proton Electronic Industrial Co., and others—know what they will eventually owe for any year from 1984 to now. Attempting to do business under an anti-dumping order is fraught with uncertainty.

William J. Clinton (no relation to Hillary's husband), a Washington attorney who represents Taiwanese TV makers, says that since 1984 the Taiwanese presence in the American market has practically disappeared. Tatung is selling fewer than 20,000 TVs a year; Proton, only a couple of thousand; and AOC and Sampo have withdrawn from the market entirely—which does not absolve them from their responsibility to pay fines based on their alleged past attempts to run Zenith out of business.

*Television Digest*, a newsletter of the TV industry, reports that these Taiwanese companies have commanded less than 0.3 percent of the American market since 1986, while Zenith has hovered between 10.3 percent and 15.75 percent during the same period. Yet Zenith lawyer Frederick L. Ikenson asserted in a June 1992 letter to the Commerce Department that "it is well-known that, for years, Zenith has been struggling for survival against an onslaught of aggressively and unfairly priced (dumped) imports of color television receivers from Pacific Rim countries, including Taiwan."

Zenith has been able to punish its competitors through anti-dumping laws based on the premise that it's an American producer. But in a marketplace of global corporations, what exactly is "an American producer"? Zenith is involved in a variety of TV-set–related activities at its 20 U.S. facilities, including service, sales, distribution, design, and engineering. But do these activities entitle Zenith to file dumping complaints?

Commerce weighs six factors in defining a U.S. producer: 1) the value added by the company in its U.S. operations; 2) the technical expertise required by these operations; 3) the number of American employees involved; 4) the extent of the company's capital investment in the United States; 5) the quantity and types of parts from the United States; and 6) miscellaneous other costs and activities contributing to production. There are no hard-and-fast rules associated with these criteria; they are merely the questions that Commerce tries to address in making its judgment.

The Commerce Department has received affidavits from recent and current employees of Zenith's Springfield factory that cast doubt on the company's

standing as an American TV producer. When the affidavits were filed, Zenith had one assembly line running in Springfield. John Peine, former president of the union that represented workers there, describes it as a "half line," since it rarely ran 40 hours a week and was completely dependent on parts from Mexico. According to one worker on this assembly line, the week of January 18, 1993, was the first 40-hour week on the line since July 1992; more typical was the week of January 11, when the line operated for only eight hours.

One ex-employee testifies that "at the time I began working at the Springfield plant [in 1973], I considered the operations to constitute color TV production. By the time I was laid off in 1992, Zenith did not produce color TVs in the United States. Zenith was an American-owned company and that was the only thing American about it....at most Zenith was an assembler of color TVs. For example, the Springfield plant assembled 'Mexi-kits' produced in Mexico. A 'Mexi-kit' consisted of a virtually complete color TV; the only assembly missing was the cathode ray tube (CRT). At the Springfield plant, we simply screwed the CRT into the cabinet and plugged in a few wires connecting the CRT to the printed circuit board....only six to 12 people were needed to operate the assembly line." Peine says the line in Springfield often stopped dead for lack of shipments from Mexico.

Other Zenith workers and ex-workers confirm that in Springfield they merely engaged in simple screwdriver operations, attaching CRTs and chassis assemblies to cabinets, connecting speaker wires, and attaching yokes, beam benders, labels, and cabinet backs to the chassis assembly. These actions do not appear to require significant technical skill or expertise. As one assembly-line worker laid off in 1992 says in an affidavit, "all operations performed on the assembly line in the U.S. are very simple in nature, such as screwing, bolting, and connecting wires." This same worker says that the average assembly-line worker's wage was $7.50 an hour. (Workers also claim that many of these TVs are marked "Made in the USA," which the Taiwanese companies say violates Federal Trade Commission and U.S. Customs regulations on country-of-origin labeling.)

Based on this testimony, the lawyers representing the Taiwanese TV companies calculated that the value added to the TVs in Springfield amounted to only $7.80. The Taiwanese companies have twice filed claims asking Commerce to reclassify Zenith or at least to investigate the company's status as a domestic producer. Commerce denied these requests, first in June 1992 because it claimed no prima-facie case had been made, then in February 1993 based on a narrow procedural point.

Clinton, the lawyer representing the Taiwanese companies, complains that it was hard to meet Commerce's burden of proof. In particular, it was difficult to find Zenith workers and ex-workers who were willing to talk. "Commerce has not conducted any independent fact finding in this investigation," Clinton says. "They are absolutely incurious about the whole thing." In February, the Taiwanese companies requested a "changed circumstances review," in effect asking Commerce to remove the anti-dumping order because Zenith, given the nature of its activities in Springfield, can no longer be considered a domestic producer of TVs. In April, Commerce rejected this request as well.

Zenith, of course, denies its competitors' claims. John Borst, vice president and general counsel of Zenith, said in an affidavit on June 15, 1992, that the line in Springfield would continue to produce 4,000 to 6,000 TVs a month and employ about 500 people. Zenith attorney Frederick Ikenson says Zenith produced an average of 4,700 TVs a month in Springfield from June to December 1992.

If the line were operating a full 40 hours a week—which, according to the testimony of employees, it was not—this would mean producing an entire TV approximately every two minutes. This isn't as hard as it sounds when "production" consists of the simple operations described above. But if the Springfield workers were assembling TVs from scratch, the task would be almost superhuman.

Union officials say the Springfield operation did indeed employ about 500 people, but only 25 were working on the assembly line. The rest were involved in distribution, general administration, and janitorial work. The quality-control line, which requires more technical expertise than the assembly line, was reduced by 66 percent between August 1992 and January 1993.

Defending its status as a domestic TV producer, Zenith notes that it produces CRTs in Illinois that are then combined with other elements. While CRTs represent from one-third to one-half of a finished TV's value, the Commerce Department considers CRT production a distinct industry. Zenith is certainly a U.S. producer of TV components, but whether it is a U.S. producer of TVs is a different question. Zenith clearly understands the difference: In 1986 it filed a separate anti-dumping claim against CRTs from Japan, Korea, Canada, and Singapore.

Nevertheless, Zenith contends that if all the various TV-related functions it performs in this country were done under one roof, it would be clear that Zenith should be considered a domestic producer. In Ikenson's response to the Taiwanese claims of January 28, 1993, he includes printed circuit boards among the items Zenith makes in the United States. But a current Zenith employee states in an affidavit that "the printed circuit boards, chassis assemblies, and finished cabinets are all produced in Mexico and shipped to the Springfield plant. None of the printed circuit boards are made in the United States."

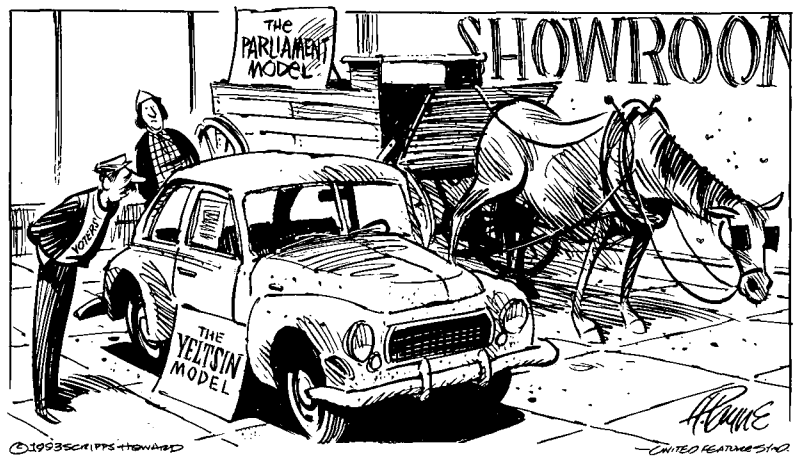
Zenith's competitors are not likely to prevail in their attempt to remove the company's privileged status. Zenith Chairman Jerry Pearlman is known to hang around at the Commerce Department to make his case personally. An attorney who used to be involved in anti-dumping cases observes: "In these cases, white skin usually trumps yellow skin."

Meanwhile, in May Zenith moved the last remnants of the assembly line in Springfield to one of its distribution warehouses in McAllen, Texas—about 10 miles from the Mexican border.

*Brian Doherty is assistant editor of* Regulation *magazine.*

# TRIP TO THE MARKET

BY CATHY YOUNG




"IT LEAKS, IT STALLS, IT RATTLES, AND IT'S UNCOMFORTABLE... BUT IT SURE BEATS THE ALTERNATIVE."

"Well, you can see for yourself how we live," several people tell me during my April visit to Moscow. The trouble is, they're not all saying the same thing: Some mean that things obviously aren't so bad; others, that anyone can plainly see how awful things are.

"Just imagine—I work two jobs now, and my husband works and gets his pension benefits, and my daughter works, and it's just enough for us to buy food!" says Faina Goncharova, the mother of my old classmate Inna, laughing almost merrily at the absurdity of it all. Goncharova, who has worked for years as a shop manager at a state-owned paper-products factory, doesn't like Yeltsin and regrets the breakup of the Soviet Union. But she wishes Russia had gone capitalist much sooner: "If only this had started when I was 20 years younger, I'd have started my own business. All the things I could have done!" Her second job is with a new company (owned by a "really nice couple") that makes construction materials.

Younger people in particular are defecting in droves to the private sector. Yuri, a 28-year-old trained as a physicist, makes 40,000 rubles a month ("Well, it's only $50," he concedes impatiently) as vice president of a furniture manufacturing business run by his older brother. They recently started working on an order from a French customer, their first from the West.

One of the main complaints about private business in Russia has been that "they don't produce anything, they just buy and sell"—partly a reflection of the old Soviet prejudice against "speculation," partly a legitimate criticism. But while many *biznesmeni* are essentially get-rich-quick artists with no goals beyond making a fortune playing rubles and dollars off against each other, a growing number have made enough money in trade to start investing in production. The other complaint, that the lines between the private sector and the criminal underworld are often blurred, remains a valid one: A day does not pass without new business-related shootings, car bombings, arson, or at least an unexploded grenade found near a store.

Still, there are signs of progress, such as shops with colorful signs—Western-sounding ("Exodus"), proudly Slavic ("Yaroslavna," named for a legendary 11th-century princess), or descriptive ("Udachnoye Priobreteniye": "Lucky Buy")—that are definitely a cut above traditional Soviet names like "Ovoshchi" ("Vegetables") or "Obuv" ("Shoes"). The vending stalls with their chaotic assortment of almost invariably imported goods—cigarettes (a bargain at about 50 cents for a pack of Marlboros), liquor bottles, Milky Way candy bars, crotchless lace panties, deodorant, canned pineapple, neon-colored plastic digital watches—are not only more numerous than last fall but also generally a bit more civilized: cleaner and neater, some sporting signs and logos and even occasional decorations such as Christmas-tree lights. They also display, almost without exception, "No Returns" signs; civilized trade still has a long way to go.

One would think few Russians could afford to shop at these kiosks—25 cents is a lot to pay for a candy bar when your monthly salary is $25—but they stay in business anyhow. Even the $1.00-a-pound bananas find their buyers, judging from the number of banana peels on the sidewalks (trash cans and nascent capitalism apparently do not go well together). Which is not to say that things aren't tough for the average person, and even tougher for single mothers or retirees living alone.

I watched as an elderly man in a food store realized that he didn't have enough money to pay for the fish the saleswoman had weighed for him, and with obvious discomfort had to ask her for a smaller one, only to come up short yet again (he succeeded on the third try). Yet several people, not at all from the nouveau-riche class, told me that they like things better the new way: At least if you have money, you can buy something without hunting for it and without standing in line.

Many kiosks have "Will Buy Voucher" signs posted in their windows. Would-be buyers of the vouchers that can be exchanged for shares in state companies going private are also seen in the street spots where free-lance traders who can't get a stall or a table ply their business. The interest in buying vouchers may indicate a growing confidence in the privatization plan, though the vouchers are still selling below their face value of 10,000 rubles (inflation notwithstanding). Most people

HENRY PAYNE

to whom I spoke were holding on to their vouchers, but I did meet one investor: a mathematics professor in his 60s who had deposited his voucher in a "mutual fund" run by two young men renting desk space in the neighborhood barber shop. He had already received his first dividend of 1,000 rubles.

Vassily Selyunin, one of Russia's most radical market economists (see "Russia's Real Radicals," April 1992) and an adviser to the pro-Yeltsin Democratic Russia coalition, says that the government's privatization effort "has gotten off to a pretty good start." Over half of the country's small companies—service establishments, shops, restaurants—have already been privatized, a total of about 60,000. The privatization of large enterprises (most notably, the ZIL auto factory) is starting as well, though in some areas local bosses, emboldened by Yeltsin's apparent weakness earlier this spring, have suspended the open sales of shares for vouchers.

Selyunin's more skeptical colleague, Boris Pinsker, argues that the privatization effort has been largely a fraud: The bigger, state-subsidized enterprises, he says, continue to receive subsidies and credits even after they go private, so that they enjoy the benefits of ownership without its risks, and "the umbilical cord connecting these properties to the state is not severed." Selyunin counters that if subsidies to state enterprises are retained while newly privatized companies are left to sink or swim, workers will fight the privatization of their enterprises tooth and nail. The answer, he says, is to stop all subsidies to all enterprises simultaneously.

While there is a widespread perception in the West, fostered by left-wing Sovietologists such as Princeton's Stephen F. Cohen, that Yeltsin is in political trouble because he's pushing for too swift and radical a transition to the market, this is not a view shared by many in Moscow. Polls consistently show that, at least among the urban population of Russia, more people believe that economic reform is too slow than that it is too fast. The activists of the country's democratic parties and organizations almost invariably criticize the Yeltsin government for dragging its feet on privatization and genuine market reforms. This includes even the Social Democratic Party, which has 5,000 to 6,000 members (a respectable size by present standards), about 600 of them deputies in local and national representatives bodies.

Although the SDP advocates a German-style welfare state and has ties to the Socialist International, one of its leaders, 41-year-old chemist Vladimir Chernetsky, says that he and most of his party comrades "support rather vigorous and painful programs of transition to the market." The reason, he explains, is a simple one: "We understand very well that the values of a social market economy can be cultivated only in a fairly well-developed industrial society. Social democracy does not stand a chance in the kind of conditions we see around us now." Chernetsky explains that the Social Democrats support government aid programs targeted at the truly needy (and preferably run by local authorities). But in this they differ little from market liberals like Selyunin, or from the Republican Party of Russia, which descended from a social-democratic faction in the old Communist Party but evolved into a party with a quasi-libertarian platform.

**There is a widespread perception in the West, fostered by left-wing Sovietologists, that Yeltsin is in trouble because he's pushing for too swift and radical a transition to the market. Yet polls indicate more Russians think economic reform is too slow than that it is too fast.**

During the last year there has been much dissension in Russia's loosely knit, feud-prone democracy movement over the issue of support for Yeltsin (see "Scattered Opposition," March). But the April 25 referendum and the danger of the ascendancy of anti-reform forces have led the democrats to close ranks. Some of the most prominent activists who split with DemRussia over what they regarded as the organization's blind loyalty to the president—such as historian and political commentator Leonid Batkin and Free Democratic Party leader Marina Salier—joined in the referendum campaign.

The running wasn't always smooth. Days before the vote, Yeltsin was to appear at a conference of the Committee of Democratic Organizations. Instead, he sent buses to take the assembled leaders of democratic groups to meet with him in the Kremlin. Salier saw this as a slight, since Yeltsin had come out to meet with other, often less friendly organizations. In a display of either principle or peevishness, she refused to go.

Selyunin notes that "democrats are good at rallying around an urgent cause" (which hardly makes them unique). I ask whether he thinks this new if imperfect unity will last beyond the referendum. He says there are at least two other very important and immediate causes to bring the democrats together: the passage of a new constitution and the reform of election laws. With Yeltsin's proposal to call a constitutional convention—the longtime dream of the radical democrats—this just might be true.

Meanwhile, the new Russian revolution has succeeded, to a remarkable degree, in creating a new class with a stake in continued market reform and democracy: the entrepreneurs, the owners of privatized properties, the private-sector employees, the farmers on nearly 200,000 individual and family farms, the boys and girls selling "erotic gazettes" in metro stations. Sleazy or heroic, these are people who possess the instinctive conviction that their lives are their own, and who will not go gentle into that good night.

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# COPPING OUT

BY CHARLES OLIVER

During a January conference sponsored by *National Review*, Media Research Center Chairman L. Brent Bozell III said, "Surveys have shown that one in every three cops on television today is the villain. It is devastating that one out of every three policemen is perceived and promoted as an evil person."

**Action-adventure shows such as the new version of *The Untouchables* are striking a chord with TV audiences that the more sedate cop shows haven't.**

For a medium that supposedly hates the police, television continues to produce an awful lot of cop shows. You can turn on network television almost any night of the week and watch detectives relentlessly and painstakingly put together clues on shows such as *Law & Order* or *Homicide*. Or you can flip over to an independent station and watch syndicated action shows such as *Renegade* or the new version of *The Untouchables*. By my count, there are at least a dozen police shows currently in production. And ABC has added a new series by Stephen Bochco to its fall lineup—*NYPD Blue*. If they're portraying cops as bad guys, either Hollywood is on a suicide mission or the American people are deeply disillusioned with the police.

In fact, neither is the case. Bozell's statistic may be devastating, but it isn't true. When I asked the Media Research Center where Bozell got that figure, they said that it came from the book *Watching America* by Robert and Linda Lichter and Stanley Rothman, a survey of television programming from the 1950s to 1986.

But on page 222 of the book, the Lichters and Rothman report, "Only one law enforcer out of seven was portrayed negatively," compared to an average of 23 percent among all the professions whose portrayals they tracked. Two-thirds of the cops were positive, and the rest indeterminate.

And the negative characters included not only "evil" cops but police officers who were vain, or dumb, or supercilious, but not evil. In fact, the Lichters and Rothman tell us, "Most of these [negative portrayals of police] were well-intentioned bumblers whose ineptitude or naivete provided comic results." The example they cite to illustrate this point is a bumbling policeman on *The Flying Nun*. They continue, "Only 5 percent of the law enforcers in our sample were real evildoers."

The Lichters' organization, the Center for Media and Public Affairs, is updating its survey, which is, after all, seven years old. Research Director Daniel Amundson says, "My gut reaction is that the percentage of negative portrayals is down. In the 1980s, you had shows like *Miami Vice* that dealt with police intrigue and corruption. Today, the typical show is *Law & Order*; it's more cops-on-the-beat type of shows. They are less likely to present policemen as villains."

In many ways these current shows seem much like all of the other cop shows that TV has produced. (Many of which themselves live on in syndication or on cable.) But over the years, cop shows have changed. The form they take, the issues they grapple with, and the way they present their subjects have been in constant evolution. How the police drama has changed over the last 40 years tells us much about how we as Americans see ourselves, our society, and our protectors.

Two basic approaches to the police drama were established in the early days of television, and every police drama that has aired has followed—with some modifications—one of these two paths. The first important police show was *Dragnet*. "This is the city, Los Angeles, California. I work here. I'm a cop." With these words, in 1952, Jack Webb began a seven-year run as Sgt. Joe Friday in the highest-rated police show in TV history.

Webb presented the policeman as a blue-collar working stiff. Eschewing action, he showed crime solving to be a plodding, frustrating occupation. Friday was more likely to be seen filling out paperwork than drawing his gun, and he rarely faced personal danger.

But police work differs in some important ways from construction or working on an assembly line. Wedded to Friday's work ethic is a strong sense of moral purpose. What he is doing is *right* and *important*. Friday always treats his suspects professionally, but he always lets them know that he thinks they are scum.

This same attitude toward criminals informs the other paradigm show of the '50s: *The Untouchables*. And what scum Eliot Ness and his cohorts faced. Quinn

CHUCK HODES/PARAMOUNT PICTURES

Martin, the producer of *The Untouchables*, chose the most physically unattractive actors he could find to play his villains. Then he photographed them using powerful cross lighting that highlighted every wrinkle, blemish, pock mark, and scar on an actor's face. *The Untouchables* featured some of the ugliest villains in TV history.

It also featured more violent deaths than any show aired to that time. Martin's gangsters didn't just shoot their enemies; they machine-gunned them to death—filling them with hundreds of bullets—or blew them up. *The Untouchables* presented policemen as superheroes; it was an action-adventure show fitted in police-drama trappings.

But audiences in the peaceful Eisenhower era weren't quite ready for it and all of its bloodshed. The show was successful enough to remain on the air for four seasons, but it finished in the year's top 25 shows only once.

Beginning in the early '60s, crime, particularly violent crime, began to spiral upward. In 1963, President Kennedy was killed. In the mid-'60s, race riots engulfed several major cities. There was political violence by opponents of the Vietnam War. The Manson family murdered several people for no rational reason. You get the picture. Throughout the '60s and into the '70s, the world began to look more and more dangerous.

At the same time, people were beginning to question the honesty and efficacy of government, including the police. In the '60s, television showed us Southern policemen beating civil-rights protesters and Chicago policemen beating anti-war protesters. *Life* magazine gave us photographic proof that American troops had massacred women, children, and old men at a place called My Lai. In the '70s, President Nixon resigned in a cloud of scandal because of Watergate, and the Knapp hearings showed a New York City Police Department shot through with corruption.

America needed heroes, but it no longer trusted traditional authority figures. Television responded to this dilemma by giving cop shows a novel twist: maverick detectives. These men and women maintained the moral certitude and diligent police work of their forbears, but they mixed it with a pronounced compassion for crime's victims and a disdain of the system.

They were private detectives such as Barnaby Jones, Frank Cannon, and Jim Rockford (*former* policemen all) who operated completely outside the official channels. Or they were young idealists, such as Linc, Pete, and Julie of *The Mod Squad*, who were determined to reform the police department from within. Or they were just simple mavericks like Baretta or Starsky and Hutch who were forever being dressed down by their superiors for breaking the rules in their pursuit of justice.

All of these shows eschewed the realism of *Dragnet* for a fast-paced fantasy world of crime stopping. And as part of this fantasy world all of them (with the notable exception of *The Rockford Files*) increased the gun play and deaths common to the police show. Quinn Martin came into his own in this period. The violence that he had pioneered with *The Untouchables* proved enormously successful; he had seven shows on the air at one point.

It may seem paradoxical that people respond to fear of increased violence in the real world by retreating into an even more violent fantasy world. But the violence is these series is palpably unreal and serves to distance viewers from the violence that they perceive to be part of their everyday life. A few years ago, for example, many people thought that it was amusing when *Rambo* became the top-grossing movie in Beirut, but that city has long had an appetite for American action films. In a bizarre way it is comforting to escape for an hour or two into a world in which all of the violence is fake and in which the good guys always win.

Paradoxically, these populist shows are more apt to present policemen as real villains than the more cerebral cop shows. A staple of the action-adventure style of police drama is the rogue cop who must be taken down by the heroes of the series. Indeed, some shows (*The Rockford Files* and *Renegade*) even begin with the premise that the hero has been removed from the force after being framed for a crime he didn't commit by crooked brethren.

On the other hand, the *Dragnet*-style shows that now dominate the network lineups rarely use this dramatic device. Instead, they focus on the more mundane aspects of police work. *Law & Order* and *Homicide* present their protagonists as low-key working stiffs with a strong sense of morals who ploddingly put together the clues that will solve a crime. In one episode of *Law & Order*, for example, we followed the detectives as they went to 22 different police-supply stores to see if one of them had sold a set of handcuffs used in a crime.

These shows seem rather like *Dragnet*. But there are differences. *Dragnet* had a blue-collar feel to it; the working men and women on today's cop shows are undoubtedly white-collar workers. Friday and his partners used to banter about their families or sports. Today's TV cops have weightier concerns. For example, in one episode of *Homicide*, while investigating a drug-related murder, policeman John Munch (played by Richard Belzer) keeps up a running debate with his partner over the merits of the war on drugs. The other cop contends that drugs are doing real damage to people. But Munch argues that the damage is done by poverty and alienation and that drug abuse is only a symptom of these bigger problems.

Part of this difference undoubtedly arises from changes in the people behind the camera. Jack Webb was a blue-collar guy who stumbled into radio after a stint in the Army. The people writing and producing today's police shows, and every other television program, are college-educated middle-class folk. But this change also reflects the change in those seeking careers in big-city police departments. They are more likely to have some post-high school education than their counterparts in the '50s.

Another difference is in cases the shows address. Webb searched through the files of the Los Angeles Police Department for his stories. He came up with quirky bits about feuding husbands and wives, riveting hunts for

armed robbers and killers, and, perhaps best of all, a touching story of a child who stole a statue of the baby Jesus from a church because his family was too poor to buy Christmas presents.

Today's police shows also draw their stories from real-life crimes, but the people who write these stories seem to do their research by watching *Inside Edition*, *A Current Affair*, and *Donahue*. Now, we have stories about underage prostitutes who shoot their pimps, mercy killing of the sick and elderly, and the bombing of abortion clinics.

Moreover, the working environment for TV cops has changed. The neat, clean precinct office of Joe Friday is gone. It has been replaced by decaying buildings with malfunctioning air-conditioning systems. The eager-to-help citizens of *Dragnet* are no more. Today's cops are much more likely to face witnesses who are suspicious of or even downright hostile toward the police.

In turn, TV cops now are not necessarily the paragons of virtue that Joe Friday was. They have tempers; *Law & Order*'s Christopher Noth loses his temper and pushes suspects around. (Though he never strikes them.) *Homicide*'s John Munch is an embittered cynic. In both cases, though, the portrayals are still sympathetic. Both are basically decent men who feel that their work matters and who are frustrated by the amount of evil in the world.

But the biggest difference between these shows and *Dragnet* is that now the good guys don't always catch the bad guys. In that respect, America seems to have lost the innocence of the Eisenhower era.

Does the presence of these workaday-cop shows on network schedules mean that Americans have grown tired of action shows? Does it mean that our concerns about violent crime have abated?

I think not. The network shows have garnered the praise of critics and intellectual types—a subject for anti-media conservatives to ponder—but none of these shows is doing particularly well in the ratings. *Homicide* isn't even on NBC's fall schedule, but it will be back as a mid-season replacement. For successful new cop shows, you have to turn to the first-run syndication market. There, action-adventure shows featuring maverick cops such as *Renegade* and a new version of *The Untouchables* have been coming on like, well, gangbusters. These shows aren't as good as their network rivals (or as good as the original *Untouchables*), but they have struck a chord with audiences that the more sedate cop shows haven't.

Violent crimes have begun to level off over the last couple years, but violent crime still remains common throughout America. Until and unless violent crime abates, America's need for escapist violence—and for a world in which the bad guys always get caught—will continue.

*Charles Oliver writes for* Investor's Business Daily.

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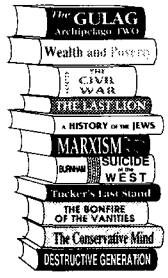


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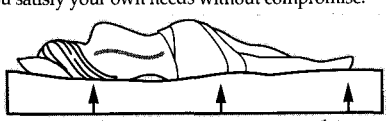

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# THE BIG PICTURE

BY CYNTHIA BELTZ

President Clinton has taken a new approach to industrial planning: "accelerating the development of technologies critical for long-term economic growth" and giving "special attention" to those industries that "are going to explode in the 21st century." For these key industries, suggests Laura D'Andrea Tyson, head of the president's Council of Economic Advisers, the government should evaluate "the likely course" of development of critical technologies; compare those baseline projections with visions of what a prosperous national economy should produce; promote domestic development of those industries; and monitor the activities of foreign governments and companies in those fields.

Such plans have long been used to promote American military interests. But improving the competitive performance of American firms is fundamentally a different task. Commercial success does not depend upon linear projections of foreign tank strength but on such intangible and unmanageable factors as consumer tastes for products that don't yet exist, the erratic pace of technological change, and corporate development strategies that often transcend national borders and government control.

To understand how poorly industrial planning works in this environment, consider the Japanese and European experience with high-definition television—the next generation of consumer television. (See "The Sharper Image," June 1991.) Just as the Clinton administration argues for special treatment of certain high-tech industries, Japan and Europe promoted HDTV in an effort to gain a competitive foothold in a single industry that many believed would generate benefits throughout the economy. And in the United States the debate over HDTV was driven by a fear that this country would lose its competitive edge unless it kept pace with the spending and planning programs of its trading partners. But with HDTV, planning failed and the market triumphed.

Back in 1989, a parade of industry "experts" testified before Congress that the federal government had to wake up and match the efforts of Japan and Europe in HDTV. Because both regions had already set their HDTV standards and were spending millions to commercialize the technology, such industry heavyweights as Zenith and the American Electronics Association argued that without a comparable program the United States would be left behind in the global high-tech race.

**Japan and Europe learned the hard way about the hazards of trying to chart "the likely course" and accelerate the commercialization of the emerging HDTV industry.**

"If the US does not choose to re-enter consumer electronics via HDTV," warned AEA, "the country as a whole is likely to continue to experience a declining world market share in automated manufacturing equipment, personal computers and semiconductors. Loss of these markets will contribute to the erosion and eventual loss of a US manufacturing base." To avoid this catastrophe, industry experts called for a "well-coordinated," $1.3-billion HDTV program that included federal grants, loan guarantees, infant-industry nurturing, and guaranteed procurement contracts to promote prototype development and commercialization.

Though the U.S. government rejected the plan, American firms were not left behind. Instead, the United States surpassed Japan as the leading seller of semiconductors last year. And despite Japan's head start and Europe's deep pockets, the U.S. companies now lead in several key areas of HDTV. The United States may be exporting an HDTV standard to its trading partners.

What hurt Japan and Europe was their faith in the power of industrial targeting and coordinated plans. Both decided that HDTV was too important to be left to market forces and substituted the judgment of bureaucrats and industry experts for those of consumers. Since the Bush administration ideologically opposed this type of substitution, in this country rival firms had to fight for position in the HDTV marketplace and for FCC approval of an industry standard. American taxpayers spent less than $200 million to promote HDTV. Taxpayers in Japan and Europe, however, have spent between $1 billion and $2 billion to fund joint industry-government programs for HDTV that have now been abandoned.

In sharp contrast to the American HDTV standards race, which involved a half-dozen different contenders, Japan and Europe each developed a single system (Hi-Vision and HD MAC, respectively) that was then selected as the industry standard. Competition was actively managed in the early stages in Japan by NHK, a quasi-public national television network, and actively discouraged in Europe by a series of mandatory E.C. directives.

Isolated from the pressures of competition, engineers had little incentive to develop potentially superior or commercially viable systems before the standard was selected and imposed on the market. This missed opportunity left both nations vulnerable to shifts in technology that ultimately proved to be fatal for their HDTV plans.

Japan and Europe also learned the hard way about the hazards of trying to both chart "the likely course" and accelerate the commercialization of an emerging industry. With industry assistance, bureaucrats tried to coordinate every aspect of the HDTV transmission chain so that an attractive product would be available to entice consumers into the market. Actions included coordinating R&D through public-

private consortia and developing and testing a transmission system, subsidizing purchases of production equipment and program production, getting an HDTV satellite up and running to deliver the programs, getting sets into the stores, and organizing public demonstrations to spark consumer demand.

At first, coordinated R&D and government planning appeared to pay off, as Japan registered a series of technical triumphs. Japan was the first to transmit HDTV signals (1979), the first to have its HDTV standard accepted by industry (1985), the first to market HDTV receivers (1990), and the first to offer HDTV programming in prime time (1991), which the president of Matsushita Electric Industrial Company hailed as "a curtain raiser for the Hi-Vision era."

HDTV proponents in Europe were also quick to boast about their technical accomplishments. The European Association of Consumer Electronic Manufacturers claimed that with its MAC system Europe had a five-year lead on its foreign HDTV rivals and was on the verge of having the world's finest television system. Unfortunately, European taxpayers soon discovered that commercial success requires much more than a working prototype.

The industrial planners in Japan and Europe underestimated the complexity of the high-tech food chain and overestimated their ability to coordinate producers and to play the role of consumers. In Europe, for example, equipment manufacturers complained they were unable to provide consumers with MAC receivers because the chip industry was too slow in developing the components. In Japan, HDTV sets were available but consumers were not. Only eight hours of HDTV programs air each day and sets sell for between $8,000 and $10,000.

Once cheap, lightweight, large flat-panel screens arrive, consumer interest could pick up dramatically. But flat-panel displays and manufacturing technologies have advanced at a disappointingly slow pace. Meanwhile, to the exasperation of engineers and bureaucrats, consumers seem to be more interested in receiving a broad choice of quality programs than high definition.

Japan and Europe were also surprised by the pace of technological advance in HDTV transmission technologies. Rather than tackle the problem of squeezing the HDTV signal into the narrow band needed for over-the-air delivery, both tried to rush to the marketplace by relying on satellite delivery and the analog-based technology of conventional television.

Digital transmission promises to resolve the signal-compression problem and thereby reach more households using terrestrial delivery. It also permits TVs to become computerized information and entertainment centers. Most industry experts dismissed digital transmission as a distant possibility that posed no threat to analog-based HDTV systems. They were wrong.

**Clinton's people apparently hope that by requiring consultations between business and federal agencies, only the best plans for strategic industries will receive public funds.**

Driven by the competitive pressures of the American marketplace, General Instrument shocked the experts and changed the rules of the game in 1990 when it presented its digital HDTV system for FCC testing. Since then, investors and policy makers worldwide have been forced to confront the prospect of digital HDTV becoming available at the same time as analog-based systems.

As a result of these unforeseen market and technology developments, Japan's head start in HDTV provided at best a hollow victory to industrial planners. The analog system that Japan spent 20 years developing has been a commercial failure. Early this year, only 10,000 sets had been sold; industry and government experts had predicted that consumers would have bought more than 1.3 million sets. Manufacturers have defected from the Hi-Vision system and dramatically scaled back their mass-market dreams. Japanese manufacturers are in the unexpected position of scrambling to catch up to the United States in digital transmission and processing technologies.

The European experience with HDTV was even worse. Heavy subsidies succeeded only in producing an unpopular system that became obsolete before it was fully implemented. E.C. officials finally conceded commercial and regulatory defeat this spring when they abandoned their seven-year-old MAC HDTV system.

Unfortunately, there's little indication that Washington has learned anything from HDTV. A background report on HDTV in progress for the private Council on Competitiveness is expected to suggest, for instance, that more (not less) coordination and planning will let the United States avoid the mistakes made abroad in HDTV.

Under Bush, the United States gained in HDTV from a "just say no" stance toward industrial policy. Under Clinton, the approach appears to be, "let's take a look." The new administration apparently hopes that by requiring consultations between private businesses and federal agencies, only the best plans for strategic industries will be supported with public funds.

The industrial-policy advocates still don't get it: Government planners can't keep up with a high-tech marketplace. In HDTV, the case of even well-coordinated plans made in the early 1980s with the best information available failed. What the United States accomplished in the arms race with industrial planning has little in common with what is possible in the commercial rivalry with its trading partners.

The HDTV experience shows that pushing competition over collaboration can advance technologies beyond the limits industry experts consider possible. Adopting this home-grown model should work for whatever industries are deemed worthy of "special attention." It could also provide a needed dose of humility for Washington's aspiring industrial planners.

*Cynthia Beltz is a technology policy analyst at the American Enterprise Institute and author of* High Tech Maneuvers: Industrial Policy Lessons of HDTV *(AEI Press).*

# SUCKING SOUNDS

BY THOMAS W. HAZLETT

*This is a transcript of my robust, if hypothetical, debate with the Hon. H. Ross Perot, American Patriot, on the North American Free Trade Agreement. Denied an opportunity to participate in his recent network infomercial warning America about the evils of international commerce, I must carry on this dialogue here. And, since he answered for me on TV, I will gladly observe reciprocity by answering for Ross in this forum. Out of courtesy, this debate will be conducted in Ross's native language—Texan. To absorb this column properly, you therefore have to read it aloud, in Perot-style Texas twang. (Laughter is denoted by a splitting "Ha! Ha!," roughly analogous to the sound made by a large crow with gastrointestinal trouble.)*

*Ross*: I am here to talk to you, my fellow Americans, about the Mexican free trade agreement. It includes Canada, but I don't worry about Our People competing with Their People, in a white-wage—I mean, high-wage—environment. It's those poor Mexicans who are gonna put America Inc. right in the dumper.

*Me:* Capitalists don't pay high wages just because they like you, Ross. That would be high-wage robbery! You're a capitalist, Ross, so you tell us: Do you pay your secretaries less than your engineers because you like the engineers better, or because the secretaries don't need the dough?

*Ross:* I pay 'em a fair wage for a full day! It's like milkin' a cow: The richer the milk, the more I like to squeeze her.

*Me:* Almost, Ross. Whereas the cow just goes along for the oats, you have to pay your workers a market wage to induce their cooperation, and that wage will be mighty close to what consumers will pay for their output. That's where supply and demand equilibrate in the labor market, Ross.

*Ross:* I just love you intellectual boys. Spend all day drawin' on the chalkboard, then forget how to get home at night. The real reason I pay so much is it's damned expensive to live in America! Do you know how many bills my employees have?

*Me:* Do you mean to tell me that all the Bangladeshis would have to do to prosper is run up a Sears charge card? You're upside down, amigo. The reason you pay so much for your American workers in general, and for your engineers in particular, is that if you don't pay them the market value of what they produce, another sharp entrepreneur will steal them away—at a profit!

*Ross:* But those Mexican workers—they've got no standard of living at all! They live in shacks and eat dirt for dinner! They've got a minimum wage of 58 cents an hour! How can the American workingman compete with that?

*Me:* I want to compliment your very special breed of humanitarianism, Ross, being so anxious to protect rich Americans from competing with the poor Mexicans. But Mexican workers average only about $1.50 per hour in wages—more than East Europeans but below American or Canadian levels—because that is the value of what they produce. If today's Mexican workers were capable of producing more, those crafty Hong Kong (or Saudi, Japanese, or Swiss) businessmen would snatch 'em up, save a fortune in labor costs, and clean your clock in the marketplace. It's like water runnin' downhill, Ross.

*Ross:* Name me one *rich* economist. Ha! Betcha don't even know half a one!

*Me:* We're filthy rich in *knowledge*, Ross. Take some notes. Right now, we produce Chevys. Open up a free-trade zone with Mexico, and—whoosh!—the big sucking sound: G.M. moves the plant to Tijuana to take advantage of cheap labor, relaxed pollution controls, and so forth, and our jobs head straight south. Now, G.M. ends up with higher profits; that money is still spent right here at home.

And the Mexican workers get all these U.S. dollars. For what? To buy U.S. goods; exports to Mexico are now about $40 billion annually. (I'll bet you're surprised those poor "little brown ones" livin' in shacks had $40 billion to blow, Ross!) That's $6 billion more than we buy from them, and since their tariffs are even higher than ours, our exports should shoot up like a jack rabbit during huntin' season once NAFTA kicks in. The Mexicans work cheap, but they don't work for free; they work for U.S. dollars: tickets to buy stuff at the Made in America counter. Hallelujah! That's a two-way sucking sound, Ross.

*Ross:* You academic pointy-headed types make me laugh. Ha! Ha! You got all them theories and more hot air than the Goodyear blimp. But I've actually gone out there and produced jobs in the marketplace and I can tell you a thing or two, Mr. University Economist! Hey, tell me what GDP will be, fourth quarter 1994! Ha! Ha!

*Me:* Listen up, ol' billionaire buddy. I'm surprised as a pregnant bull that a world-class businessman such as yourself would engage in such shoddy merchandising. Now, if you were selling me something in the economic marketplace you wouldn't dare shoot yer mouth off without knowing exactly what you could deliver. You'd get all your company experts in a room to tell you precisely what your service could do, where the competition was, and how the customer could get the best value before makin' your sales pitch.

But when yer out peddlin' these political ideas, you seem to shoot from the hip, pardner. You don't know what the hell yer talkin', and lotsa times yer talkin' trash. Old, discredited theories, last century's discards. Do a little larnin' 'bout the way the economy works, Rossaroo, and see if you cain't give those "owners of America" a world-class trade policy.

Remember how yer daddy always warned you about reducin' GDP by 10 or 20 percent with hare-brained, populist scare tactics just so's you'd get elected president?

*Ross:* Ha! Ha!

*Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California, Davis.*

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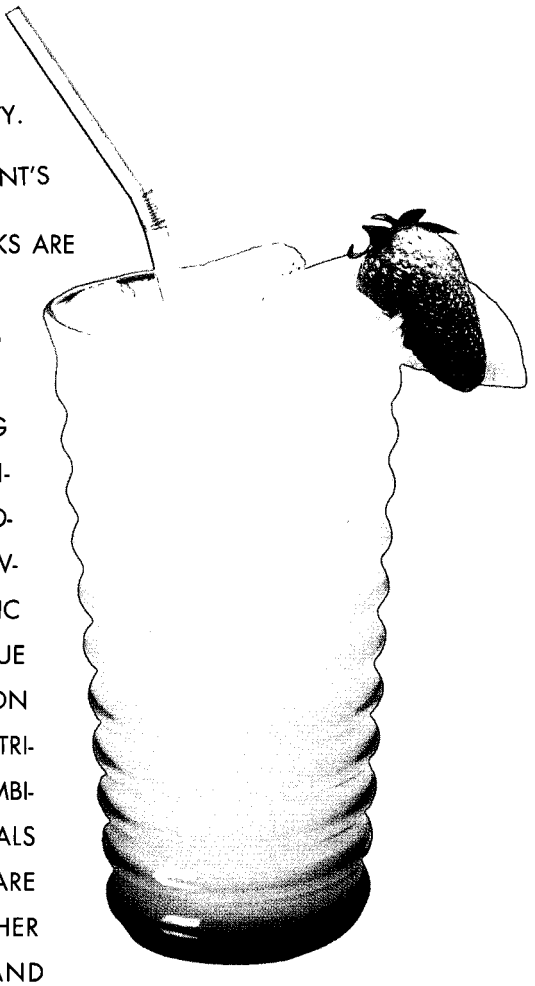

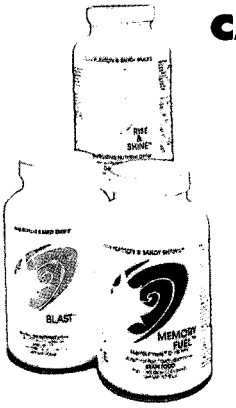


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